

ADVISORY OPINION NO. 89-41

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

A legislator and sole proprietor of an engineering company

OPINION SOUGHT

Whether it is a violation of the Act for a legislator to perform architectural and engineering services for the state or any of its political subdivisions or agencies?

OTHER FACTS RELIED UPON BY THE COMMISSION

The individual is a legislator and the sole proprietor of an engineering company. His work encompasses the entire state. The Legislator's company provides professional design services to numerous public entities.

Typically his firm is selected in competition either on price or qualifications. His firm presently employs seventeen people. His future plans are to either form a partnership or corporation. The Legislator's company is currently recognized as the largest design firm in the region.

The Legislator has been particularly cautious about submitting proposals. He has avoided the use of any confidential information and does not improperly use his influence to secure the work.

Whenever the legislator believes there may be a conflict of interest during the legislative session he asks to be excused from voting.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in part that...no public official...or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority or with which he or she is employed: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body.

West Virginia Code 6B-2-5(b)(1) states a public official or public employee may not intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary constituent services, without compensation, does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

The Commission notes at this time the Legislator has not identified specific state entities with which his business has a public contract.

However, it is the Commission's opinion that the Legislator falls within subsection 6B-2-5(d)(1) in that he is an elected public official whose business has an interest in the benefits or profits of contracts with governmental bodies over which he may have direct authority.

It is not necessary for the Commission to decide at this time over what the Legislator has direct authority, since the second proviso in the same subsection provides that nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body. However, each case must turn on its own merits. Therefore, if the Legislator is permitted by statute to be a party to a contract with a governmental body then the business he is associated with is also permitted.

However, the Legislator should be careful not to use nor knowingly disclose any confidential information he obtained to further his personal interests as set out in subsection 6B-2-5(e).

Furthermore, this delegate should be mindful that nothing in this opinion shall be construed to state that other provisions in the Act in subsections 5 are not applicable should violations become evident to this Commission.

Also, subsection (b)(1) requires the delegate not to intentionally use the prestige of his office for his or her business' private gain.



Chairman