

ADVISORY OPINION NO. 89-77

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

Attorney for a State Department

OPINION SOUGHT

Whether a State public employee intentionally used her position or prestige for private gain in a matter which occurred before September 30, 1989?

OTHER FACTS RELIED UPON BY THE COMMISSION

A State employee advised the Commissioner of Human Services by memorandum dated May 9, 1989, that she had applied for services through an Area Child Advocate Office for enforcement of a County Circuit Court order granting child support.

A lawyer, who is employed by the Child Advocate Office and is supervised by the employee appeared at a hearing on or about September 7, 1989 before a Family Law Master in a contested action seeking past and future child support from the employee's former husband for their mentally retarded child.

The Family Law Master informed the former husband at the hearing that he knew the employee, worked with her, and that he (the ex-husband) could have the hearing before a Circuit Judge if he desired. The former husband did not object to the Family Law Master holding the hearing.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that a...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...

West Virginia Code Section 6B-2-4(w) states in pertinent part that...the provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine and within one year before the filing of a complaint under section (a) of this section or the appointment of an investigative panel by the Commission under section (b) of this section.

ADVISORY OPINION

The question before the Commission is whether a State public employee intentionally used her office or prestige for her or her child's private gain in obtaining a child advocate attorney to represent her in a hearing on September 7, 1989 before a Family Law Master whom she knew, regarding a contested child support matter.

However, the alleged acts constituting the violation occurred prior to September 30, 1989. Therefore, the Commission is without authority to render an opinion on this matter.

  
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Chairman