

ADVISORY OPINION NO. 89-79

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

Director of a State Department

OPINION SOUGHT

1. Whether it is a violation of the Act for a promulgating agency after conducting public meetings on proposed rules, to hold closed meetings with only one interested and affected group?
2. Whether an "agency" committed a violation of the Act when it conducted closed meetings with representatives of varied interests in order to reach a compromise upon disputed requirements of its promulgated rules while those rules were under consideration by the Legislative Rule-Making Review Committee and the Committee approved of such meetings?

FACTS RELIED UPON BY THE COMMISSION

The requested opinion deals with a question of the propriety of ex parte contacts that have arisen during the rulemaking process of an agency.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-3 states in pertinent part that a person subject to the provisions of this chapter may make application in writing to the Ethics Commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter, and would thereby expose the person to sanctions by the Commission or criminal prosecution...

West Virginia Code Section 6B-2-5(a) states in pertinent part that the provisions of this section apply to all elected and appointed public officials and public employees...

ADVISORY OPINION

The Commission would state at the outset that there is no provision in the Ethics Act that speaks to or prohibits ex parte contacts with an "agency" while submitting legislative rules for approval.

Furthermore, the Commission would note that section 6B-2-5(a) states that persons covered by the Act are public officials or public employees.

Therefore, the Commission is only empowered to render an advisory opinion on actions that would violate the provisions of the Act and expose a person to sanctions by the Commission or criminal prosecution.

The facts provided do not suggest that is the case here and therefore, the Commission is without authority to render an opinion on this matter.

The Commission would note that West Virginia Code Section 6-9A-1 et.seq. deals with The Open Meetings Act.

  
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Chairman