

ADVISORY OPINION NO. 89-87

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1989

GOVERNMENTAL BODY SEEKING OPINION

Executive Director of a County Housing and Redevelopment Authority
(hereafter referred to as County Authority)

OPINION SOUGHT

Whether there is a violation of the Act when the Executive Director of a County Authority works part-time for a company that does not do business with the County Authority?

OTHER FACTS RELIED UPON BY THE COMMISSION

Prior to his employment as Executive Director with the County Authority, the public employee worked on a part-time basis with a corporation that marketed a variety of financial products such as term life insurance and educational services to individual consumers.

The Executive Director continued this part-time practice after being named Executive Director. The work he does for the company is after work hours and on weekends. He states that he has not, nor will he, market any of this company's products to the County Authority. In fact, the Executive Director states that the Corporation does not make any product that he could sell to the Authority.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(h) states in pertinent part that no full-time...public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public...employee whether rendered as an employee or as an independent contractor.

West Virginia Code 6B-1-3(e) states that "ministerial functions" means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, such individual's own judgment as to the propriety of the action being taken.

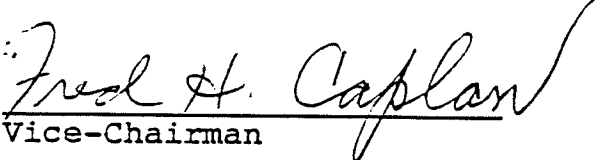
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An analysis of the pertinent facts and statutory provision (h)(1) follows:

1. The Executive director is a full-time employee who exercises policymaking, non-ministerial or regulatory authority.
2. However, neither the employee nor the County Authority regulate the business that employs the Executive Director part-time.
3. Therefore, it is not a violation of subsection (h)(1) for the Executive Director to be employed by the corporation.

An analysis of the pertinent facts and statutory provision (d)(1) follows:

1. The Executive Director is employed by and has direct authority over the County Authority.
2. The Executive Director of the County Authority is a public employee who is associated with a business which markets financial products and educational services to individual consumers.
3. However, that business does not have a public contract with the County Authority.
4. Therefore, it is not a violation of subsection (d)(1) of the Act.


Fred H. Caplan
Vice-Chairman