

ADVISORY OPINION NO. 89-96

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

Deputy Secretary for a State Department

OPINION SOUGHT

Whether it would be a violation of the Act for certain staff members to be employed part-time by certain facilities regulated by their Department?

OTHER FACTS RELIED UPON BY THE COMMISSION

A State Department employs surveyors within a certain Division to conduct licensing and certification reviews of State health facilities. Such facilities include, but are not limited to, nursing homes, hospitals, personal care homes and behavioral health centers. In addition, the Division also employs individuals who oversee nurse's aide training requirements for nursing homes. Both groups work in the same section.

Some of the staff members within the Licensing and Certification Section have requested that they be permitted to maintain part-time employment in facilities regulated by the Department. The Department has prepared suggested guidelines to minimize the potential for conflict of interest.

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 official or public employee whether rendered as an employee or as an independent contractor.

West Virginia Code 6B-1-3(e) states in pertinent part 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 judgement as to the propriety of the action being taken.

West Virginia Code 6B-2-5(e) states that no present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

ADVISORY OPINION

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

1. Based on the information provided it would appear that the staff members identified within the Licensing and Certification Section have policymaking, non-ministerial or regulatory authority.
2. It would also appear that the facilities offering employment are regulated by the Department.
3. Therefore, it would be a violation of subsection (h)(1) for these full-time public employees to be employed by such facilities.
4. However, each public employee may make written application for exemption if he can show that his education and experience is such that the prohibition would for all practical purposes deprive the person of his ability to earn a livelihood in this state outside of the government.

Also, the public employees should be mindful of subsection 5(e) which prohibits a public employee from using or improperly disclosing confidential information obtained by him during the course of his public employment.



Chairman