

ADVISORY OPINION NO. 89-126
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON FEBRUARY 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Delegate in the Legislature

OPINION SOUGHT

1. Whether it is a violation of the Ethics Act for a Delegate to work as legal counsel for a University Hospital?
2. Whether it is a violation of the Ethics Act for a Delegate to receive an honorarium for a speaking engagement?

OTHER FACTS RELIED UPON BY THE COMMISSION

Hospital

The Delegate works as legal counsel for a University Hospital. The hospital conducts business with the State but, is not considered part of the State, since it has been divested. The University Hospital does work closely with one particular School in the University. As legal counsel for the Hospital the Delegate does not have any managerial oversight of the interactions with the State.

Honorarium

Prior to becoming a member of the Legislature the Delegate gave continuing education talks to a number of groups concerning medical and legal issues. In addition to being an attorney, the Delegate is also a registered pharmacist, thus he speaks to groups both in and outside of the State on continuing medical and pharmaceutical education programs. For this service he often receives an honorarium. This practice has been on-going for several years prior to his being elected to the Legislature. None of the speaking engagements have related to the Delegate's position as a legislator. The invitations he receives to speak at seminars are based on his educational and professional experience.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected public official...or business with which he 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...has direct authority...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(c)(3) states in pertinent part that... The acceptance of an honorarium by an elected public official is prohibited.

ADVISORY OPINION

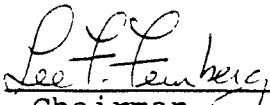
1. An analysis of the facts presented and the pertinent statutory provisions for subsections (d)(1) and (2) follows:

- a. The Delegate is an elected public official.
- b. The Delegate is employed by a University Hospital.
- c. The first proviso in subsection (d)(1) states that nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body.
- d. The second proviso specifically permits a member of the Legislature to enter into a contract with any governmental body.
- e. Therefore, it is not a violation of subsection (d)(1) of the Act for a Delegate to be employed by the University Hospital.

2. An analysis of the facts presented and the pertinent statutory provision of 6B-2-5(c)(3) follows:

The Delegate is an elected public official. West Virginia Code 6B-2-5(c) prohibits the acceptance of an honorarium by any elected public official. Therefore, it would be a violation of subsection 5(c)(3) for the Delegate to accept an honorarium.

However, this section does not prohibit an elected official from contracting with a group to provide seminars or other continuing Education programs for a fee.


Chairman