ADVISORY OPINION NO. 2013-39

Issued On August 1, 2013-39 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Former State Employee** asks whether she must wait one year before registering as a lobbyist.

FACTS RELIED UPON BY THE COMMISSION

The Requester was employed as General Counsel to a State Agency housed under the Executive Department. After years of government service, the Requester returned to the private practice of law in June 2013. Given her experience, she is contemplating registering as a lobbyist and providing lobbying services to clients.

The Requester asks whether the new lobbying revolving door provisions require her to wait one year before registering as a lobbyist, and if so, she seeks an exemption from the prohibition against lobbying.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(e) reads:

> (e) *Confidential information.* -- 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.

W. Va. Code§ 6B-3-2 reads, in relevant part:

> (e) The following public officers or employees may not, during or up to one year after the termination of their public employment or service, be allowed to register as lobbyists:
>
> (4) Will and pleasure professional employees of members of the Executive Department under the direct supervision of the Executive Department officer and who regularly, personally and substantially participates in a decision-making or advisory capacity regarding agency or department policy;

ADVISORY OPINION

The Ethics Act contains a one year "cooling off" period which prohibits certain high-ranking government officials and employees from registering as a lobbyist for one (1) year following their departure from government. This provision in the Ethics Act is commonly referred to as the new "lobbyist revolving door". The Commission notes that it lacks the statutory authority to grant an exemption to this limitation.

In applying this statute, the Commission must determine whether the Requester is subject to this revolving door. One category of employees which fall within the purview of this limitation is:

> Will and pleasure professional employees of members of the Executive Department under the direct supervision of the Executive Department officer and who regularly, personally and substantially participates in a decision-making or advisory capacity regarding agency or department policy.

W. Va. Code§ 68-3-2(e)(4)

The term "Executive Department" refers to those elected public officials who are commonly referred to as the Board of Public Works, i.e. Governor, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Secretary of State and the Superintendent of Free Schools. W. Va. Code§ 5-4-1. Although the Requester's agency reports to the Governor's Office, the Requester did not directly report to the Governor, and she was not under the direct supervision of the Governor or his staff. Instead, she reported directly to the Cabinet Secretary and to the Deputy Secretary for Legal Services of the agency which employed her. *See* Advisory Opinion 2012-25 (Chief Inspector of an agency that reports to the Governor's Office is not covered by the foregoing statutory provision since he did not directly report to the Governor but to an agency employee, nor was he under the direct supervision of the Governor or his staff.)

As a result, the Commission finds that the prohibition against registering as a lobbyist does not apply to the Requester since her former position is not under the direct supervision of a Member of the Executive Department, i.e. the Governor. Hence, she does not have to wait one year before registering as a lobbyist.

Limitations apply. In accordance with W. Va. Code § 68-2-5(f), she may not use or reveal confidential information.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 68-1-1, *et seq.,* and does not purport to interpret other laws or rules. In accordance with W. Va. Code§ 68-2-3, this opinion has precedential effect and may be relied upon in good faith by other similarly situated public servants unless and until it is amended or revoked, or the law is changed.

/s/ Jonathan E. Turak
Jonathan E. Turak, Acting Chairperson