

ADVISORY OPINION NO. 96-13

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 4, 1996

GOVERNMENTAL BODY SEEKING OPINION

A County School Teacher

OPINION SOUGHT

Is it a violation of the Ethics Act for a music teacher employed by a County Board of Education to offer private voice lessons?

FACTS RELIED UPON BY THE COMMISSION

The requester is employed by a County Board of Education as a music teacher. She teaches general music, chorus and choir to all grade levels at various schools located within the County. However, in her County, there are two elementary schools, one junior high school and a senior high school which are not included in her area of teaching responsibility.

The requester is interested in offering private voice lessons and/or voice class for a fee during her spare time. She has received requests for such instruction from parents, students, homeschooled children and various other individuals.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) provides in pertinent part that...A public employee may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain or that of another person...

West Virginia Code 6B-2-5(h)(5) provides in pertinent part that...A full-time...public employee may not receive private compensation for providing information or services that he...is required to provide in carrying out his...public job responsibilities.

ADVISORY OPINION

Pursuant to West Virginia Code 6B-2-5(b)(1), a public employee may not use his office or the prestige of his office for his own private gain. Consequently, the requester may not use her public employment position as a County School Board music teacher to influence, obtain, increase or promote her business as a private, independent voice instructor.

Further, the Commission's legislative rules on private gain expressly prohibit the use of public time, equipment and resources in the course of performing private activities. (See 258 CSR 6-5.2 and 6-8) Clearly, the office space, phones, stationary and other items provided to the requester for use in the performance of her public duties may not be used to subsidize a private effort, i.e. providing private voice lessons or classes.

West Virginia Code 6B-2-5(h)(5) provides that public employees may not receive private compensation for providing services that they are required to provide in the course of performing their public employment responsibilities. The requester would be prohibited from offering private instruction for a fee to any student whom she is required to provide such instruction during public work hours. For example, the requester would be prohibited from offering private voice lessons to any student who is enrolled in the chorus or choir classes she teaches. However, any additional instruction which differs **significantly** from the regular school curriculum would be acceptable.

The Commission notes that the requester would not be prohibited from offering private voice lessons or classes to parents, students from other schools, homeschoolers or other individuals whom she does not teach.


Chairman