

**ADVISORY OPINION NO. 96-15**  
**ISSUED BY THE**  
**WEST VIRGINIA ETHICS COMMISSION**  
**ON APRIL 4, 1996**

**PUBLIC SERVANT SEEKING OPINION**

Member of a State Board

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a member of a State Board to be employed by a company that conducts business with the State?

**FACTS RELIED UPON BY THE COMMISSION**

The requester has been appointed to a State Board which is responsible for the general oversight of the management and investment of public funds. This is a part-time appointed position which, under the enabling legislation, requires one member of the Board to be a person experienced in pension management, institutional management or financial markets.

In private life the requester is employed by a securities broker/dealer and registered investment advisor. His employer has a number of subsidiaries engaged in various aspects of the financial services industry including, but not limited to, securities brokerage, financial advisory services, state and local bond underwriting, investment advisory services and insurance agency sales activities. Some of the employer's subsidiaries currently conduct business with the State of West Virginia, its agencies and political subdivisions. Those subsidiaries expect to continue such business in the future.

The requester's compensation from his private employer is based primarily upon the profits generated from the financial consultants he supervises and, to a lesser extent, upon the generation of commissions and fees from the securities accounts of his clients. He has an ownership interest in his employer of less than two per cent (2%).

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

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

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control:... Provided, however, that nothing herein shall be construed to prohibit ... a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

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**

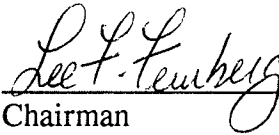
In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit the requester from serving on the State Board as its member experienced in pension management, institutional management or financial markets.

Pursuant to WV Code 6B-2-5(d)(1), a public servant or member of his immediate family may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. However, this subsection also contains a provision which allows a part-time appointed public official to have an interest in a public contract over which he has authority and control provided he fully discloses the extent of his interest in the contract, he is recused from deciding or evaluating the matter and seeks to be excused from voting on the contract.

Therefore, it would not be a violation of WV Code 6B-2-5(d)(1) for the requester to be employed by a company that conducts business with the State, since he is a part-time appointed public official. However, the requester shall follow the guidelines regarding disclosure and recusal outlined above.

The Commission notes that pursuant to WV Code 6B-2-5(b)(1), a public official may not use his office or the resulting prestige for his own private gain or for the private gain of another. Consequently, the requester shall not use his status as a Board member to increase, obtain or promote the interests of his private employer.

Finally, the requester is also cautioned that WV Code 6B-2-5(e) prohibits a public servant from either disclosing any confidential information acquired by him in the course of his official public duties or using such information to further his personal interests or the interests of his private employer.

  
Chairman