

ADVISORY OPINION NO. 96-32
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JULY 11, 1996

PUBLIC SERVANT SEEKING OPINION

A State Department Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a public employee to invest in a private company which offers digital Internet access to the home and business market?

FACTS RELIED UPON BY THE COMMISSION

The requester would like to invest and be involved part-time in the operation of a company which provides internet access service. He anticipates owning approximately 25% of the company and will use his technical expertise to assist the company in technical consulting and training as well as sales planning.

The requester is a full-time employee of a State Department. Neither he nor his subordinates exercise any regulatory authority over, or have any official responsibilities regarding, the company in which he hopes to invest, or that company's anticipated customers. He is not involved in his agency's purchasing decisions and the company is not an agency vendor.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(h)(1) provides in pertinent part that... No full-time official or full-time public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

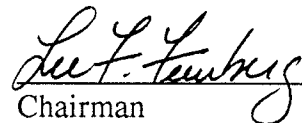
ADVISORY OPINION

While the Ethics Act places no specific restrictions on a public servant having an ownership interest in a private company, it does contain a prohibition against full-time public servants having a personal financial involvement with persons or businesses subject to their regulatory authority. They may not (1) seek employment with, (2) be employed by, or (3) seek to sell or lease real or personal property to any person or business they or their subordinates regulate.

It would be a violation of this prohibition against employment by regulated persons for the requester to become a substantial owner of a regulated business, or to work part-time for it. It would also be a violation for the requester to have a substantial ownership interest in a company which sells to persons or businesses subject to the personal regulatory authority of the requester or his subordinates.

However, since neither the requester nor his subordinates exercise regulatory authority, it would not be a violation for the requester to invest in the private company.

If the company decides to market its services to the requester's agency and if his job responsibilities change so that he has authority or control over agency contracts for those services then he would have to divest himself from any ownership interest in the company greater than 10%.


Chairman