

ADVISORY OPINION NO. 96-27

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 11, 1996

PERSON SEEKING OPINION

Private engineering firm

OPINION SOUGHT

Is it a violation of the Ethics Act if a firm hired by a State agency to develop, implement and administer a certification program for well drillers also performs well drilling services subject to the certification program?

FACTS RELIED UPON BY THE COMMISSION

A State agency is responsible for establishing and maintaining a certification program for those in the business of drilling monitoring wells. This agency has asked another State agency to develop and administer a certification program similar to that agency's existing program for water well drillers.

The second agency has issued a Request for Proposal (RFP) for a vendor to develop and administer the program, i.e. supply all necessary instruction, testing, certification and record keeping.

A private sector engineering firm intends to respond to the RFP and seek to secure a contract for the certification program. That engineering firm, the requester here, is currently active in drilling both water and monitoring wells and asks whether it would be a violation of the Ethics Act for it to continue to drill wells while administering the certification program.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code § 6B-2-5(a) provides that...The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

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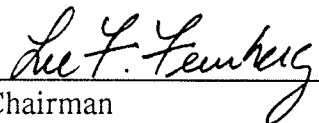
A State agency plans to contract with a private company to develop and administer a certification program for those engaged in drilling monitoring wells. A private engineering firm, which currently drills monitoring wells, is interested in bidding on the contract.

The engineering firm is concerned to establish whether it would be a violation of the Ethics Act for it to engage in the business of drilling monitoring wells, if it were awarded the contract to develop and administer the proposed certification program - since they would in effect, be training, testing, and certifying themselves as well as their competitors.

West Virginia Code §6B-2-5(a) describes the persons who are covered by the code of conduct contained in the Ethics Act. That language clearly excludes this private sector engineering firm. Neither the firm nor its personnel are subject to the Act and it would not be a violation of the Ethics Act for the engineering firm to both develop and administer the certification program and engage in drilling monitoring wells.

Although the engineering firm and its personnel are not covered by the Ethics Act, the Commission notes that the RFP contains a mandatory prohibition against a vendor having a conflict of interest. The prohibition provides that "the vendor shall covenant that it, its officers or members or employees presently have no interest and shall not acquire any interest, direct or indirect, which would conflict or compromise in any manner or degree with the performance of its services hereunder."

It is the Ethics Commission's concern that an arrangement which permitted the engineering firm to train, test and certify their own personnel, as well as their competitors, could constitute a conflict of interest. The Commission urges the requester to seek clarification from the WV Division of Purchasing as to whether these facts constitute a conflict of interest prohibited by the Request for Proposal provision.


Chairman