

ADVISORY OPINION NO. 96-55

Issued on December 5, 1996 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

A Legislator

OPINION SOUGHT

Is it a violation of the Ethics Act for a Legislator to accept employment with a private land developer?

FACTS RELIED UPON BY THE COMMISSION

A Legislator would like to accept work in land procurement, primarily for a private developer of recreational projects. Most of the work will be performed within the Legislator's district. The Legislator is concerned to establish that this work would comport with the code of conduct in the Ethics Act.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-1-2(c) states in pertinent part that...the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

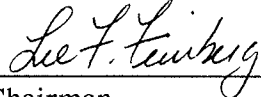
West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

ADVISORY OPINION

No provision of the Ethics Act disqualifies part-time public servants from accepting any particular employment position. The Act does place employment limitations on full-time public servants, but takes a different approach for part-time public servants, most of whom must balance their public responsibilities with the need to make a living and support their families.

The Ethics Act acknowledges the potential for conflict involved in balancing public and private responsibilities and directs that part-time public servants avoid such conflict by not taking official action on matters in which they have a personal interest. This concept is supported by the Act's prohibition against public servants using their public positions for their own private financial gain, or that of another. Together they serve to limit the potential for conflict of interest inherent in government which relies heavily on part-time public servants.

Cases arise in which an inescapable conflict exists between the public responsibilities of a part-time public servant and the demands of a second position, public or private. In such a situation, where the public servant cannot be expected to perform both positions without creating either substantial problems or the appearance of impropriety, both positions may not be held. However, this is not one of those cases and the Legislator may accept employment with the developer.



Chairman