

ADVISORY OPINION NO. 96-52

Issued on December 5, 1996 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

A County Assessor

OPINION SOUGHT

Is it a violation of the Ethics Act for an elected County Assessor, who is also a licensed surveyor to moonlight doing land survey work?

FACTS RELIED UPON BY THE COMMISSION

A County Assessor is also self-employed as a professional surveyor. He inquires whether he may accept employment to provide surveying services for persons whose land is subject to his assessment. In this particular County the Assessor is a full-time public official.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(h) provides

(1) 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.

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public servant has supervisory responsibility.

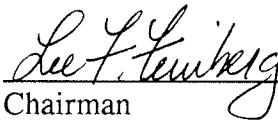
West Virginia Code 6B-1-3(f) states in pertinent part that... "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

ADVISORY OPINION

The Ethics Act prohibits full-time public servants from being employed by any person that is, or has been within the preceding twelve months, subject to their personal regulatory authority or the regulatory authority of a subordinate.

The Commission finds that County Assessors annually take regulatory action on persons who own land located in their Counties. This regulatory action is taken either personally or through subordinates who are employed by the Assessor. For this reason, the requester may not be employed by any person who owns land located in that County.

This restriction would also prohibit the requester from providing surveying services for land located outside that County but owned by a person who also owned land inside that County.


Chairman