

ADVISORY OPINION NO. 89-45

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

School bus inspector/transportation specialist in the Division of Transportation for the West Virginia Department of Education

OPINION SOUGHT

Whether it is a violation of the Act for school bus inspector/transportation specialists to accept payment for providing instruction to private firms or accepting a \$75.00 skill test fee from commercial driver applicants for their services while they are off duty, in view of the circumstances under which they become certified Instructors/Examiners?

OTHER FACTS RELIED UPON BY THE COMMISSION

Some school bus inspector/transportation specialists (hereafter referred to as inspectors) and other county personnel were required to attend training sessions at the Capitol Complex and the State Police Academy to become certified as instructors to help implement the Uniform Commercial Driver's License Act (C.D.L.).

All expenses of the training were paid by the employer except for the required eye examination. The employees are responsible for administering written examinations to school bus operators. However, they may during off-duty hours provide third party examinations as time permits. As third-party skill test examiners, they will be required to charge \$75.00 for each skill test given. The three-part skill test may require up to two hours.

Some inspectors have been approached and offered payment by private trucking firms to instruct their drivers during off-duty hours in the C.D.L. Model Drivers Manual to prepare them for licensure testing.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(h)(1) states in pertinent part that... no full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself...to be employed by any person who is or may be regulated by the governmental body which he...serves while he... is employed by the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public...employee whether rendered as an employee or as an independent contractor.

West Virginia Code Section 6B-2-5(h)(2) states in pertinent part that...no person regulated by a governmental agency shall offer employment to a full-time public employee of the regulating governmental agency during the period of time the public official or employee works...in such agency.

West Virginia Code Section 6B-1-3(e) states that "ministerial functions" means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, such individual's own judgment as to the propriety of the action being taken.

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public employee may not 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

Subsection (h)(1) of the Act only regulates the employment of full time employees who exercise policymaking, non-ministerial or regulatory authority. It does not appear that the school bus inspector/transportation specialists fall within that category.

Therefore, it is not a violation of West Virginia Code Section 6B-2-5(h)(1) for these public employees to be employed by private trucking firms during off-duty hours to administer certain tests or provide instruction to third parties for payment.

Also, subsection (b)(1) prohibits a public employee from intentionally using his office or the prestige of his office for his own private gain. However, it does not appear here that the public employees are intentionally using their office for private gain as the Legislature intended to prohibit in enacting this provision.

Lee F. Leuberg

Chairman