

ADVISORY OPINION NO. 90-25

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

Legal Counsel for a Chancellor of the Board of Directors of a State College System

OPINION SOUGHT

Whether it is a violation of the Act for a full-time professor who exercises no policy-making, nonministerial, nor regulatory authority to represent clients in a professional capacity on a part-time basis?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public employee is a full-time professor of accounting and business at one of the State colleges within the Board of Directors System.

The public employee also maintains a separate office which he uses in his part-time professional employment as a certified public accountant. In the course of his part-time employment, the professor prepares state and federal income tax returns.

He also prepares cost reports for clients in the health care industry with such reports being filed with the West Virginia Department of Human Services. These cost reports serve as the basis for compensation paid by the State to those health care providers. He is compensated at a prevailing market rate for these services.

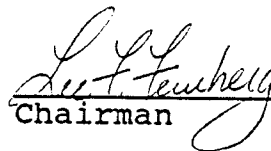
As a full-time professor, the public employee has no policy-making authority, does not perform nonministerial functions, nor regulatory functions. Also, while serving as a part-time certified public accountant, the public employee does not act in any regulatory function within the Department of Human Services.

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 or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

ADVISORY OPINION

Although the public employee is a full-time professor, he does not have any policymaking, nonministerial or regulatory authority. Therefore, it is not a violation of subsection 6B-2-5(h)(1) for the full-time professor to also serve in a professional capacity as a part-time certified public accountant.


Chairman