

ADVISORY OPINION NO. 90-43

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A public employee

OPINION SOUGHT

Whether it is a violation of the Act for a public employee to act as a consultant to a company not regulated by his Department?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public employee is a District Fishery Biologist for a State Department. His responsibilities include evaluating the impact of hydropower projects on fish and fishermen and then recommending suitable mitigation and fishery enhancement measures.

A company doing business in another state has asked him to evaluate and consult with them on the issue encountered when the power plant kills a significant number of fish. The company has not built any power plants in West Virginia nor does it have plans to do so.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(h)(1) states 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.

West Virginia Code Section 6B-2-5(e) states that no present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

ADVISORY OPINION

It is not necessary for the Commission to decide whether this employee exercises policy-making, non-ministerial or regulatory authority. It is the Commission's opinion that it is not a violation of subsection 6B-2-5(h)(1) for the public employee to be employed as a consultant since the Company is not regulated by the governmental agency which employs the District Fishery Biologist.

Also, the public employee should be mindful of subsection 6B-2-5(e) which prohibits an employee from knowingly and improperly disclosing or using to further his or another's interests any confidential information acquired by him in the course of his official duties.

Lee F. Leimberg  
CHAIRMAN