

ADVISORY OPINION NO. 90-66

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 20, 1990

GOVERNMENTAL BODY SEEKING OPINION

A City Zoning Board of Adjustment Member

OPINION SOUGHT

Whether an exemption should be granted to allow a former member of a City Zoning Board of Adjustments to waive the six month waiting period before representing clients before that Board?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor has served for the past few years as a member of a City's Zoning Board of Adjustments. The Board hears requests for variances to the zoning laws of the City. His term of appointment expired on December 31, 1989 and he was not reappointed. The requestor continued to serve as a member of this Board until a replacement was appointed.

All members of this Board resigned when the City Council failed to reappoint the requestor. A replacement Board was appointed on February 27, 1989 and all cases in which the requestor was involved were completed at the March 1, 1990 meeting.

The requestor has applied for an exemption from the six month prohibition against appearing before this Board pursuant to subsection 5(g)(5). His experience and education coupled with the fact that he is a partner in an engineering firm would deprive him of his ability to earn a livelihood in this state outside of the governmental agency.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(f) states in pertinent part that...No present or former...appointed public official... shall during or after his or her public...service represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other specific matter which arose during his or her period of public service...and in which he or she personally participated in a decision-making, advisory or staff support capacity.

West Virginia Code Section 6B-2-5(g)(1) states in pertinent part that...no appointed public official...shall during his public service or for a period of six months after the termination of his public service with a governmental entity appear in a representative capacity before the governmental agency in which he served in the following matters:

(a) A contested case involving as administrative sanction, action or refusal to act;...

(c) To support or contest the issuance or denial of a license or permit;...

(e) To influence the expenditure of public funds.

West Virginia Code Section 6B-2-5(g)(5) states in pertinent part that...An appointed public official...who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposed, deprive the person of the ability to earn a livelihood in this state outside the governmental agency.

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Representation

West Virginia Code Subsection 6B-2-5(f) states that if the requestor participated in a decision-making, advisory or staff support capacity in a specific matter which arose during his period of public service and in which he participated, he may never represent a client before the Board on that specific matter.

Appearance before Board

Subsection 6B-2-5(g)(1) prohibits an appointed public official who served with a governmental entity, for a period of six months after his termination with the entity, to act in a representative capacity before that Board on behalf of any person or company in a matter concerning the issuance or denial of a license or permit, a contested case involving an administrative action, or to influence the expenditure of public funds.

The Board member has indicated in the facts presented that all specific matters that he participated in were concluded by the Board on March 1, 1990.

However, pursuant to West Virginia Code Section 6B-2-5(g)(5) if an elected or appointed public official is deprived of his ability to earn a livelihood in the state outside of the governmental agency, the public official or employee may submit a request to the Ethics Commission for a six month exemption from the prohibition.

The Commission finds that the public official would be deprived of the ability to earn a livelihood outside the governmental agency. Therefore, the Commission hereby grants the requested exemption.


Vice-Chairman