

ADVISORY OPINION NO. 90-75
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON APRIL 20, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Public Employee

OPINION SOUGHT

Whether it is a violation of subsection 6B-2-5(h)(1) for an employee of a County Board of Education, to accept summer employment with an insulating company which contracts with the County Board of Education?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is employed by a County Board of Education in the capacity of Custodial/Environmental Operations Manager. Part of his responsibilities include working with environmental problems such as asbestos. The public employee holds an EPA certification to work with the different aspects of asbestos.

The requestor's employment position entails coordinating abatement and control programs, maintaining and updating relevant records and documents. He also monitors and updates school asbestos files, and acts as a caretaker of Asbestos Management Plan for the County.

The requestor's job description does indicate that the requestor participates in the development of school system policies and administrative rules and regulations.

However, the requestor does not approve or sign purchase orders, nor choose the contractors to be utilized for asbestos clean-up projects.

The County Board of Education utilizes an insulating company to handle the County's larger asbestos removal projects. This insulating company has offered the requestor the opportunity to work for the asbestos removal projects at different industrial locations outside the State during the summer break.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Subsection 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 or serves in the governmental agency...

West Virginia Code Subsection 6B-2-5(h)(3) states in pertinent part that...a full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition against seeking employment with a person who is or may be regulated, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide upon each application on a case-by-case basis.

ADVISORY OPINION

It is the Commission's opinion that the requestor does exercise policymaking, nonministerial or regulatory authority. Therefore, the requestor falls within the category established by the Act which prohibits his employment with an agency regulated by his department.

Therefore, the Commission finds that it would constitute a violation of subsection 6B-2-5(h)(1) of the Act for the County Board of Education employee to accept summer employment with an insulating company which contracts with the County Board of Education, since his department has some regulatory control over the Company.

However, the requestor may submit a written application to the Commission, pursuant to subsection 6B-2-5(h)(3) of the Act, for an exemption. In order to receive the exemption the requestor must show that he would be adversely affected by the enforcement of subsection 6B-2-5(h)(1) of the Act in that his education and experience is such that he would be deprived of his ability to earn a livelihood outside the governmental entity with which he is currently employed.


Vice-Chairman