

ADVISORY OPINION 90-149
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON SEPTEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

Director of a State Department

OPINION SOUGHT

Whether it is a violation of the Act for a public employee to provide training for a group of providers (not an official association) for remuneration while on annual leave from his employment or during off-duty hours?

OTHER FACTS RELIED UPON BY THE COMMISSION

A public employee, who is a policymaker with the State Department while on annual leave from his public employment, would receive remuneration for conducting training courses for nursing home providers.

Although the training classes conducted by the public employee are not considered to be part of his particular job responsibilities such training is offered by his State Department to these providers on a larger scale.

These Nursing Home providers are regulated by the State Department and the employee in question is considered a policymaker. The public employee has input into the recommendations for the licensure and certification of these providers in order that they may be eligible for medicare and medicaid payments.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public employee may not knowingly and 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. The performance of **usual and customary duties associated with the office** or position or the advancement of public policy goals or constituent services, **without compensation**, does not constitute the use of prestige of office for private gain.

West Virginia Code 6B-2-5(h)(1) states that no full-time public official or 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 employee whether rendered as an employee or as an independent contractor.

ADVISORY OPINION

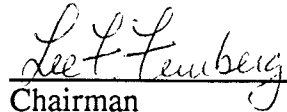
Private Gain

It is the opinion of the Commission that it would be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for a public employee to conduct training classes during off duty hours or to take annual leave when he would receive remuneration from a group of providers since these training classes are already offered by his State Department at no charge, through a program of guest speakers. This subsection allows for a public employee to perform usual and customary services associated with his office **without compensation**. However, in this instance the public employee would be receiving monetary compensation based on his position and prestige for providing such training that is already offered by his State Department.

Employment

Also, pursuant to subsection 6B-2-5(h)(1) of the Ethics Act a full-time public employee who exercises policymaking or regulatory authority may not be employed by any person who is regulated by his governmental agency. It is clear that these providers are regulated by the employee's State Department. Further, this full time public employee exercises policymaking and regulatory authority since he has input into the recommendations for the licensure and certification of these providers in order that they may be eligible for medicare and medicaid payments.

Therefore, it would be a violation of subsection 6B-2-5(h)(1) of the Ethics Act for a public employee to receive remuneration for conducting training courses for individual providers since these providers are regulated by his State Agency.


Chairman