

ADVISORY OPINION NO. 91-10

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Former Employee of a State Compensation Fund

OPINION SOUGHT

- a. Whether it is a violation of the Ethics Act for an attorney who works in a private Law Firm to represent a Company in a matter which involves the State Worker's Compensation Fund (hereafter referred to as the Fund), which was his former employer?
- b. Whether public records subject to disclosure by the West Virginia Freedom of Information Act would be considered confidential?

FACTS RELIED UPON BY THE COMMISSION

A Company has retained a Law Firm to represent it with respect to bankruptcy matters. One of these matters concerns its State Worker's Compensation Fund liability.

An attorney with this Law Firm has experience in the area of the Fund liability and was included by the Law Firm in the original staffing of this case. The attorney's experience stems from the fact that he was previously employed by the Fund as the Director of the Employer Relations Division.

The requestor has also stated that most of the information received and maintained by the Employer Relations Division of the Fund is subject to the Freedom of Information Act and would not be considered confidential information.

The requestor stated that he did not personally participate in any of the matters which the Law Firm is currently representing the Company concerning the Fund.

Included with the requestor's letter to the Ethics Commission was a letter from the Fund's Executive Secretary and the Employer Relations Legal counsel which support the requestor's contention that the information received and maintained by the Employer Relations Division of the Fund is subject to the Freedom of Information Act and would not be considered confidential information. The letter further states that the attorney did not personally participate in a decision-making, advisory or staff support capacity in any issue concerning this particular Company which may have arose during his employment with the Fund.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

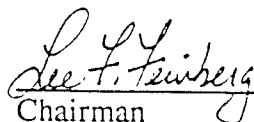
West Virginia Code Section 6B-2-5(e) states in pertinent part that...no present or former public...employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests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

West Virginia Code Section 6B-2-5(f) states that...No present or former...public employee shall during or after his or her public employment or 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...employment and in which he or she personally participated in a decision-making, advisory or staff support capacity.

ADVISORY OPINION

a. Subsection 6B-2-5(f) prohibits a former public employee from representing a client in a contested case or specific matter in which he personally participated in a decision-making, advisory or staff support capacity. Since, in this instance, the public employee did not personally participate at the Fund in the matters currently being litigated by the Company it would not be a violation of subsection 6B-2-5(f) of the Ethics Act for the attorney to assist the Law Firm in representation of the Company.

b. It is the Commission's opinion that since Employer Relations Division records are described as "public records" by the Fund and releasable under the State's Freedom of Information Act they would not be confidential information within the meaning of the Ethics Act. The Commission is strongly influenced in this opinion by the Fund's assessment and determination that Employer Relations records are not confidential. Therefore, any disclosure or use of such information contained in the records would not be a violation of subsection 6B-2-5(e) of the Ethics Act.


Chairman