

ADVISORY OPINION NO. 91-27
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON MAY 2, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a public employee with the Waste Management Section of the Division of Natural Resources to own and operate an Asbestos Laboratory?

FACTS RELIED UPON BY THE COMMISSION

The requestor is a full-time temporary employee with the Waste Management Section of the Division of Natural Resources in the capacity of an Engineering Technician. He is seeking permanent employment in this position. As an employee with the Waste Management Section he has regulatory powers over the disposal of solid waste within the State including waste which may contain asbestos. One of his duties is to insure that asbestos is properly and legally disposed of by the various contractors conducting this service.

The requestor is the owner and microscopist of a Laboratory. The purpose of this Laboratory is to analyze samples of building materials under a special microscope in order to determine if they contain asbestos. The results of these tests are given to the owner of the building and the requestor does not make any recommendations to the owner for the abatement of such materials.

The requestor states that his private company does **not** conduct business with any person who is or may be regulated by his governmental agency, the Waste Management Section of the Department of Natural Resources. He does not conduct sampling, write management plans, perform air monitoring during abatement or give final clearance after the abatement to any building. Further, he does not have any contact with the contractors performing the construction and demolition abatement work for his clients.

Approximately 95% of the work performed by his private Company is derived from environmental consultants who work outside the State. The remaining 5% comes from within the State from county school systems, individual owners of buildings and homes, real estate companies and architectural firms. Currently, less than one percent of his work involves conducting analysis for private contractors who may be regulated by his State Agency. However, effective immediately he will not take such contractors as clients. There will not be a direct connection between private company and the construction and demolition contractors, since the analysis is performed at the request of the property owners.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

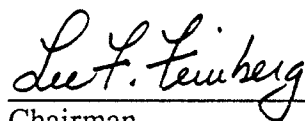
West Virginia Code Section 6B-2-5(h)(1) states in pertinent part that...no full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body 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.

ADVISORY OPINION

Pursuant to subsection 6B-2-5(h)(1) of the Ethics Act, a full time public employee who exercises policymaking, nonministerial or regulatory authority may not seek employment either as an employee or independent contractor with any person who is or may regulated by his governmental agency.

Although the requestor does exercise regulatory authority in the performance his duties as a public employee he has stated that his private company does not conduct business with any person who is or may be regulated by his governmental agency, the Waste Management Section of the Division of Natural Resources. The requestor states that the 1% of his current business dealing with such contractors would be discontinued immediately.

Therefore, it would not be a violation of subsection 6B-2-5(h)(1) of the Ethics Act for a public employee with the Waste Management Section of the Division of Natural Resources to own and operate an Asbestos Laboratory as long as he does not conduct business with persons who are regulated by his governmental agency.


Chairman