

**ADVISORY OPINION NO. 91-31**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON MAY 2, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

A Member of a Board of Directors for a City Hospital

**OPINION SOUGHT**

Whether it is a violation of the Ethics Act for an attorney who is a member of the Board of Directors for a City Hospital to represent an employee of the Board in a matter which arose during his term and in which he may have personally participated as a Board member?

**FACTS RELIED UPON BY THE COMMISSION**

The requestor has been a practicing attorney in the County since June of 1980. In September 1980 the requestor was appointed to an unexpired term on the Board of Directors of a Community Hospital which is an agency of a City. The attorney would like to provide legal representation for an employee of the Community Hospital in a matter which arose during his term of appointment to the Community Hospital Board.

The Community Hospital has employed a physical therapist since its creation in 1971. The physical therapist had been working on a contractual percentage basis, and certain employees actually worked for him, not the Hospital. In late 1981, the Hospital's accounting firm raised the question whether this arrangement was proper under reimbursement guidelines and suggested that the staff should be employed by the Hospital. The physical therapist was concerned that being employed by the Hospital would remove his ability to maintain a private office practice, and he therefore resisted the Hospital's efforts.

The employee appeared before the Board of the Community Hospital in February 1982 regarding the employment contract matter. The employment matter was referred to the Executive Committee for a recommendation to the Board of Directors. The minutes from the Executive Committee meeting indicate that the requestor/attorney was present and participated during the Executive Committee session.

A recommendation was made to hire the physical therapist with the understanding that he would be able to maintain his private office practice. The Hospital Board and the employee agreed to the employment contract proposal. However, the minutes do not indicate whether the Hospital Board actually voted on the proposal or whether the Hospital Administrator implemented the proposal without the Board's official directive.

The Hospital's administration has now approached the employee to initiate a change in his employment contract which would require the physical therapist to change his hours of work, and would for all practical purposes have the effect of removing his ability to maintain his outside office practice. The physical therapist was referred to the requestor for legal advice by other members of the Hospital Board. The requestor would like to represent this employee in the matter. In developing the evidence the requestor received the minutes of the Board meeting which reflect that he attended the meetings concerning the employment matter in question.

#### **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...public...service represent a client or act in a representative capacity with or without compensation on behalf of any person in a...**specific matter** which arose during his...period of public service...and in which he...**personally participated** in a **decision-making or advisory capacity**.

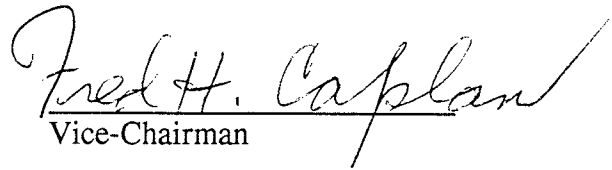
#### **ADVISORY OPINION**

Pursuant to subsection 6B-2-5(f) of the Ethics Act, a present or former appointed public official may not act in a representative capacity on any specific matter which arose during his period of public service and in which he personally participated in a decision-making, advisory or staff support capacity.

The term "representative capacity" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person. Certainly, the most logical example would be an attorney acting on behalf of a client.

It is the Commission's opinion that the matter about which the attorney/Board member would be representing the employee would be the specific issue considered by the Hospital Board several years prior.

Therefore, it would be a violation of subsection 6B-2-5(f) of the Ethics Act for the requestor to represent the Community Hospital employee in the employment contract matter, since it arose during his period of public service and the minutes of the Board meetings show that he personally participated in the decision-making process relating to the main issue at hand.

  
Vice-Chairman