

ADVISORY OPINION NO. #91-62

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 13, 1991

GOVERNMENTAL BODY SEEKING OPINION

An Assistant Attorney General

OPINION SOUGHT

Whether it is a violation of the Ethics Act for an Assistant Attorney General to seek employment with a private law firm?

FACTS RELIED UPON BY THE COMMISSION

The requestor is an Assistant Attorney General for the State and is assigned to represent several agencies within State government. His duties as such include the representation of a specific Agency in courts of record as well as assisting the Agency's Commissioner with cases at the administrative level. He has provided advice and critical analysis on a variety of matters and initiatives, including legislation, with the focus usually on possible or on-going litigation.

The requestor does not serve in a policy making or regulatory capacity. Such role is performed by the Agency's in-house legal staff, auditors, regulators and administrative staff which makes the policy decisions. In short, the Agency makes the decisions and the requestor represents them in court.

The requestor has been offered a job with a local private law firm. This firm is not involved in any action before or against the office of the Attorney General or any of the specific agencies which he is assigned to represent.

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.

West Virginia Code Section 5-3-2 states in pertinent part that...the attorney general shall appear as counsel for the State in all causes pending in the supreme court of appeals...in which the State is interested; he shall appear in any cause in which the State is interested that is pending in any other court in the State, on the written request of the governor, and when such appearance is entered he shall take charge of and have control of such cause; he shall defend all actions and proceedings against any state officer in his official capacity in any of the courts of this state...when the state is not interested in such cause against such officer, but should the state be interested against such officer, he shall appear for the state; he shall institute and prosecute all civil actions and proceedings in favor of or for the use of the state...The attorney general shall keep on proper books, a register of all causes prosecuted or defended by him in behalf of the state or its officers and of the proceedings had in relation thereto... and he shall preserve in his office all his official opinions and publish the same in his biennial report...

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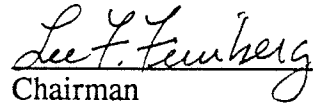
Subsection 6B-2-5(h)(1) of the Ethics Act prohibits a full-time public employee who exercises policymaking, nonministerial or regulatory authority from seeking employment with, or allowing himself to be employed by any person **who is or may be regulated** by the governmental body which he serves while he is employed or serves such agency.

As an Assistant Attorney General the requestor does have the requisite authority contemplated by this subsection since he does perform certain nonministerial functions as they relate to the legal representation of various State agencies.

The Attorney General is the legal representative of the State and its agencies. Consequently, the Commission finds that the Attorney General's office is not a regulatory agency except in the areas of consumer protection and antitrust where statutes grant the Attorney General's office enforcement and regulatory authority. Therefore, it would not be a violation of subsection 6B-2-5(h)(1) of the Ethics Act for the Assistant Attorney General to seek employment with a private law firm since his potential employer is not regulated by the Attorney General's office.

The Commission would remind the requestor that pursuant to subsection 6B-2-5(f) a present or former public employee may not represent a client or act in a representative capacity 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 period of public service or employment and in which he personally participated in a decision-making, advisory or staff support capacity.

Further, the Commission would note that subsection 6B-2-5(g) prohibits a full-time staff attorney, for a period of six months after the termination of his public employment with a governmental entity from acting in a representative capacity before the governmental entity with which he was employed in any contested case involving an administrative sanction, action or refusal to act and a variety of other matters.


Chairman