

ADVISORY OPINION NO. 91-68

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 3, 1991

GOVERNMENTAL BODY SEEKING OPINION

Chairman of a County Ambulance Authority

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a Board member of an Emergency Operation Center to serve simultaneously as a Board member of a County Ambulance Authority?

FACTS RELIED UPON BY THE COMMISSION

An Emergency Operation Center Board member has been selected to serve as a Board member for the County Ambulance Authority. Both positions are part-time appointed positions with responsibilities which may overlap.

The Ambulance Authority was created to establish and maintain adequate emergency ambulance systems for the entire County in order to promote the health and welfare of the citizens and residents of this County. The Board members of this particular Ambulance Authority are compensated for their service.

The Emergency Operation Center is responsible for the emergency dispatching (911) system in the County and Board members of the Emergency Operation Center are compensated for their service.

The requestor states that there will be contractual agreements between the County Ambulance Authority, the Emergency Operation Center and ambulance operators to provide emergency ambulance services throughout the County.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(h)(1) states that no full-time public official...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 6B-1-2(c) states in pertinent part that...the State government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

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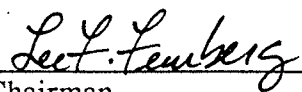
Employment

Subsection 6B-2-5(h) of the Ethics Act only limits a full-time public official 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 agency which he serves while he serves in such agency.

In this instance subsection 6B-2-5(h) does not apply since the individual, while acting as a Board member of the Emergency Operation Center or the County Ambulance Authority, is not a "full-time" public official. Further, although in his capacity as an Emergency Operation Center Board member he may exercise policymaking, regulatory and nonministerial authority, he would not be seeking employment with a person regulated by the Center. The Commission determined in Advisory Opinion #91-54 that the prohibition against seeking employment with regulated "persons" established in subsection 6B-2-5(h) of the Ethics Act does not apply to seeking employment with other governmental agencies.

Therefore, it would not be a violation of subsection 6B-2-5(h)(1) of the Ethics Act for a Board member of an Emergency Operation Center to serve simultaneously as a Board member of a County Ambulance Authority.

The Authority Member should be mindful of subsection 6B-1-2(c) of the Ethics Act which provides that a public official should seek to be excused from voting, recused from deciding or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter that has become "personal to him". The Commission considers a matter to be "personal" when the public official has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote or would give the appearance of impropriety. The Commission has determined that in order for a public official's recusal to be effective he must physically remove himself from the room during the discussion and decision making process.


Chairman