

ADVISORY OPINION NO. 93-33

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 2, 1993

GOVERNMENTAL BODY SEEKING OPINION

A City Manager on behalf of a City Council Member

OPINION SOUGHT

Is it a violation of the Ethics Act for an employee of a Public Service Commission to serve as a member of a City Council?

FACTS RELIED UPON BY THE COMMISSION

The City operates under a city manager form of government. This form of government requires the members of the City Council to elect one Council member to serve as the mayor for two year terms.

The current Mayor of the City is also an employee of the Public Service Commission. His position entails the investigation and follow-up of complaints filed with the PSC which involve any "service for hire" including taxi cab services, wrecker services, garbage services or mobile homes. He is not responsible for rate regulation or cost of service studies. Further, the Mayor has stated that he would not investigate any complaints concerning businesses located within his county of residence.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

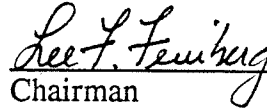
West Virginia Code §6B-2-5(h)(1) states that no full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body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

In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit an employee of a Public Service Commission from simultaneously serving as a member of a City Council.

The provisions of WV Code §6B-2-5(h)(1) prohibit a public official or employee from seeking employment with "persons" who are "regulated" by the their public employer. Although running for a seat in a City Council may be considered "seeking employment", the prohibitions established in this section do not apply. The Ethics Act, at WV Code §6B-1-3(f), defines "person" as an "individual, corporation, business entity, labor union, association, firm, partnership or other such organization". The Commission determined in Advisory Opinion #91-52 that since the definition of "person" does not include governmental agencies, the prohibition against seeking employment with regulated persons does not apply to other governmental agencies.

Therefore, it would not be a violation of WV Code §6B-2-5(h), or other provisions of the Ethics Act for an employee of a Public Service Commission to serve as a member of a City Council.


Chairman