

ADVISORY OPINION NO. 94-31
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON DECEMBER 1, 1994

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee

OPINION SOUGHT

Is it a violation of the Ethics Act for a public employee to be secondarily employed by a company which is regulated by his governmental agency?

FACTS RELIED UPON BY THE COMMISSION

The requester is employed by a State agency. His job responsibilities include overseeing the operations of the continuous air monitoring network implemented and administered by the Agency. He organizes schedules for and supervises three employees who conduct weekly checks on equipment, collect air pollution samples and perform repairs. He often required to perform these tasks himself. The requester also purchases equipment, parts and supplies to sustain the air monitoring efforts of his governmental agency.

The requester was asked to do sound system work for a family who owns a business which is regulated by his governmental agency. These individuals have been friends of the requester and his family for over forty years. Further, the requester worked for the business prior to his public employment. Recently, the requester has completed additional work on the sound system.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

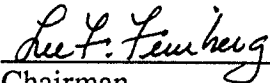
West Virginia Code §6B-2-5(h)(1) states that no full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body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

Pursuant to WV Code §6B-2-5(h)(1) a full-time public employee with policymaking, nonministerial or regulatory authority may not seek employment with any "person" who is or may be regulated by the governmental agency with which he is employed. For the purpose of this section "person" is defined as an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

However, the job responsibilities associated with the requester's position with the State Agency as previously described do not involve policymaking, nonministerial or regulatory activities. Consequently, the requester does not have the authority contemplated by WV Code §6B-2-5(h)(1) and the restrictions against seeking or accepting outside employment are not applicable.

Therefore, it would not be a violation of WV Code §6B-2-5(h)(1) for the requester to seek or accept employment with individuals who own a company which is regulated by his governmental employer. The type of compensation received by the requester, whether it is money or any other thing of value is not relevant to the outcome of this opinion.


Chairman