

**ADVISORY OPINION NO. 96-37**

**Issued on August 8, 1996 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**PUBLIC SERVANT SEEKING OPINION**

A City Police Chief

**OPINION SOUGHT**

Is it a violation of the Ethics Act for the chief of a municipal police department to contract with a local festival organization to provide entertainment services?

**FACTS RELIED UPON BY THE COMMISSION**

The police chief operates a part-time business which supplies entertainment to fairs and festivals. He has for several years provided the entertainment for a local festival created and operated by an organization of citizens, businessmen and area volunteers. This organization is not affiliated with any public agency and is operated by a board of directors independent of the City. The City provides no financial support for the festival, although it does provide police services during the festival as it does for other special events, festivals and parades.

The chief conducts his private business activities during his off duty hours at his home/office and uses no city personnel, supplies or equipment. He began handling the festival organization's entertainment needs before becoming chief of police. His charges for this particular festival are confined to actual expense reimbursement - he does not charge the normal booking fees. This arrangement results in a substantial savings to the festival organization.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(b)(1) provides in pertinent part that...A public official or public employee may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain or that of another person.

West Virginia Code 6B-2-5(h)(1) provides in pertinent part that...No full-time official or full-time public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

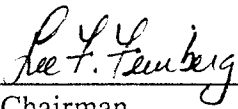
(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

### ADVISORY OPINION

WV Code 6B-2-5(h) prohibits full-time public servants from seeking or accepting employment from persons who are subject to their personal regulatory authority or that of a subordinate. The festival organization is a "person" for the purpose of this prohibition and the chief should not deal commercially with it, if the department is taking, or has within the previous twelve months taken, regulatory action on a matter affecting the organization.

The Commission finds that the mere fact that the city police department provides routine police services to the festival organization, as it would other similar events staged within the City, does not subject the festival organization to the "regulatory" authority of the city police chief or his subordinates. Absent any regulatory action within the past twelve months by the city police department, or any current regulatory action, it is not a violation for the police chief to contract to provide services for the festival organization.

While there is no suggestion that he has done so, it would be a violation for the chief to use the influence of his official position to secure unwarranted advantage for his private business activities [in fact he represented the festival organization before his appointment as chief of police] or to use his official time, personnel, supplies or equipment to further his business activities.

  
Chairman