

ADVISORY OPINION NO. 96-38

Issued on August 8, 1996 By The

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

A State Police Officer

OPINION SOUGHT

Is it a violation of the Ethics Act for a law enforcement officer to own and operate a company which provides towing services?

FACTS RELIED UPON BY THE COMMISSION

The requester is a State Police Officer assigned to a specific police detachment in County "A". The officer resides in County "B" and would like to establish and operate a towing service in this County ("B").

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 or her office or the prestige of his or her office for his or her own private gain or that of another person.

West Virginia Code 6B-2-5(e) provides in pertinent part that...No present or former public official or public employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interest of another person.

ADVISORY OPINION

While no provision of the Ethics Act prohibits the Officer from owning or operating a business during his off duty hours, it does place limited restraints on his moonlighting or secondary employment activities.

The Act prohibits full time public servants from seeking or accepting employment from persons who are subject to their personal regulatory authority or the personal regulatory authority of a subordinate. The prohibition extends to selling or leasing real or personal property and rendering services as an employee, business or independent contractor. WV Code §6B-2-5(h).

The Act also prohibits the Officer, as it does all public servants, from using his position or the influence of his position for his own private gain. That means that the Officer may not use his normal duty hours, his official supplies, equipment or personnel to further his private business

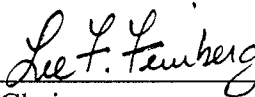
activities. Nor could he trade on his position as a police officer to secure unwarranted or unfair advantage for his private business interests. He should not, for example, urge other police officers to throw business to a fellow officer and they should not make preferential or unwarranted referrals to his business.

Although the Ethics Act would prohibit the police officers from extending preferential referrals to a company owned by a fellow officer, the Commission would recognize the propriety of the Officer's business being included in a comprehensive list of all area towing companies given to potential customers, provided the list did not identify one of the companies as being owned by a police officer.

In addition, the Act prohibits the Officer from improperly disclosing confidential or nonpublic information acquired through his public position or using it for his own personal financial gain. It would, for example, be improper for the Officer to make personal use of highway traffic accident information, not available to the general public, to generate towing business.

Subject to the matters discussed above, it would not be a violation of the Ethics Act for the Officer to operate a towing business in a county in which he is not stationed and has no routine official responsibilities. Should the Officer consider expanding his towing business into the area to which he is assigned, or should he be reassigned to the area in which his business operated, he should ask the Commission for another advisory opinion based on those facts.

Finally the Commission advises the Officer that this advisory opinion is confined to the provisions of the Ethics Act. It does not supersede or diminish more stringent rules and regulations, if any, established by his own agency. He must establish that his private business activities are consistent with the requirements of the WV Division of Public Safety.


Chairman