

ADVISORY OPINION NO. 97-08

**Issued on March 6, 1997 by the
WEST VIRGINIA ETHICS COMMISSION**

PUBLIC SERVANT SEEKING OPINION

Office Assistant

OPINION SOUGHT

Is it a violation of the Ethics Act for a clerical employee to sell real estate to a regulated company?

FACTS RELIED UPON BY THE COMMISSION

The requester works for a State regulatory agency reviewing permit applications and transfers. The review process is intended to ensure that a person suspended for prior violations of agency operating regulations is not allowed to obtain another permit for a different entity.

The requester exercises no decision making discretion in the review process. She checks applications against computer screens from other State agencies to confirm the accuracy of ownership or control information contained in the applications. If a discrepancy is found to exist, the agency denies the application pending the applicant's resolution of the problem.

The requester inherited real estate which has been offered for sale since 1992. A current permit holder has offered to enter into a fifteen month lease/purchase agreement for the property.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(h) provides

(1) 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.

(2) Within the meaning of this section, the term "employment" includes professional services

and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public servant has supervisory responsibility.

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(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.


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ADVISORY OPINION

West Virginia Code 6B-2-5(h) prohibits full-time public servants from being employed by persons on whom they take regulatory action. The Commission finds that the official activities of the requester involve non-discretionary, ministerial actions and would not constitute regulatory action for the purposes of WV Code 6B-2-5(h).

Therefore, the requester would not violate the Ethics Act if she entered into a lease-purchase agreement or outright sale of real estate with the permit holder. The requester is cautioned to consult with Commission staff if her job responsibilities change while she is in the process of leasing or selling property to a permit holder.

This holding does not immunize the requester from potential liability under WV Code 6B-2-5(b) (misuse of office for the private gain of another) if she uses her position to provide undeserved benefits to a permit holder with whom she may have a lease/purchase agreement.


Chairman