

LEGAL ETHICS INQUIRY 81-4

(October 2, 1981)

**PRIVATE EMPLOYMENT OF STAFF ATTORNEY
OF PUBLIC SERVICE COMMISSION**

The Committee on Legal Ethics has received a request for a formal opinion concerning a publicly-employed P.S.C. Staff Attorney concurrently accepting private employment as a consultant in rate-making and other utility cases to out-of-state consumer groups. The facts are as follows:

The P.S.C. Staff Attorney represents the P.S.C. before hearing examiners and represents the P.S.C. when cases are appealed. The lawyer has acted as lead counsel for the P.S.C. in several hearings involving Utility X in West Virginia, which is part of an integrated nationwide system of companies in which the individual utility companies are similarly structured, operate under standardized procedures and often have management employees who are responsible for several separate companies in different states in the same geographic area. The duties as Staff Attorney include investigating and preparing cases, cross-examining witnesses and designing rate structures. As a result of the lawyer's P.S.C. employment, this Staff Attorney has become quite knowledgeable about Utility X's finances, operations and management. The P.S.C. has broad and extensive power to investigate and order a utility to divulge detailed information pertaining to the methods and practices of the utility. The Staff Attorney has access to any such information received by the P.S.C. from the utilities under

the Commission's broad grant of authority. Consumer groups have hired this Staff Attorney to act as a consultant and expert witness in utility cases involving the counterparts of Utility X in New York, Texas and Washington, D.C. In one particular instance, the Staff Attorney prepared a case and cross-examined witnesses in a hearing before the West Virginia P.S.C. in which Utility X was a party. Subsequently, the Staff Attorney, acting in his private capacity, prepared the cross-examination of witnesses in a hearing which involved Utility X's Washington, D.C., counterpart before the District of Columbia's utility regulatory body, where several of the same witnesses who appeared in the prior West Virginia hearing testified again to similar facts.

Before discussing the ethical problem inherent in the situation just described, it is necessary to understand the interests the P.S.C. must protect. With this understanding, a determination about any possible conflict between the interests protected by the public employment and the interests pursued by the private employment can be made.

The P.S.C. must evaluate and balance the interests of the public and the utilities. Sections 24-1-1(a) and (b) of the West Virginia Code (1980 Replacement Volume), which describes the legislative purpose and policy for the P.S.C., reads:

(a) It is the purpose and policy of the legislature in enacting this chapter to confer upon the public service commission of this State the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

(1) Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;

(2) Provide the availability of adequate, economical and reliable utility services throughout the State;

(3) Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the State's energy resources, such as coal;

(4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services; and

(5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises.

(b) The legislature creates the public service commission to exercise the legislative powers delegated to it. The public service commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the State's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

To avoid any conflicts and the appearance of impropriety, this Staff Attorney should cease accepting any private employment that is related to utilities and utility regulation as long as the attorney is employed by the P.S.C. By avoiding any such private employment, the Staff Attorney can better protect and be responsive to the public and the utility interests that must be fairly evaluated by the P.S.C.