

ADVISORY OPINION NO. 89-29

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

Partner in a real estate firm and member of a County Solid Waste Authority

OPINION SOUGHT

Whether there is a conflict of interest when a commission member serves on a County Solid Waste Authority and participates in a decision regarding a landfill permit sought by a Company that the real estate member's firm represented during the sale of the land?

OTHER FACTS RELIED UPON BY THE COMMISSION

The individual seeking the opinion represents that:

- (1) On December 3, 1988, his real estate firm represented a landfill Company in the sale of 15 acres of commercial property and earned a commission in excess of \$100,000.
- (2) On January 17, 1989, the partner in the real estate firm was appointed to the County Solid Waste Authority.
- (3) On August 17, 1989, the landfill Company applied to the County Solid Waste Authority for a permit to operate a large landfill which will accept out of state refuse.
- (4) There is no current contract between the Company and the real estate firm for the sale or rental of any properties.
- (5) The only contract between the Company and the real estate firm or any of its subsidiaries was for the period of March 10, 1988, to December 8, 1988, at which time the sale was consummated and a commission was earned and paid.
- (6) At no time during the period of the contractual arrangements or after the contractual period was any agreement made by the member to grant a permit for landfill in exchange for a real estate listing or payment of a commission.
- (7) The partner in the real estate firm was not appointed to the County Solid Waste Authority until January 17, 1989, which was nearly six weeks after the contractual arrangement with the Company was fulfilled.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public official may not 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-1-2-(c) states that the Legislature finds the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

West Virginia Code 6B-2-4(w) states that the provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine.

ADVISORY OPINION

It does not appear that the Commission member has intentionally used his office or prestige for the private gain of another as prohibited by subsection (b)(1).

Furthermore, it is the Commission's opinion that there was no contractual relationship between the member, and the Company after September 30, 1989.

The Commission is only empowered to render an advisory opinion for acts or proposed actions that would constitute a violation of the Act or result in criminal prosecution. There are no acts set forth in the request that fall within that scope.

However, subsection 6B-1-2(c) states that an individual should not vote on a matter when such becomes personal to that individual.

Luc F. Lemberg  
Chairman