

ADVISORY OPINION NO. 89-34

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

Counsel for and on behalf of a Town

OPINION SOUGHT

"Can an individual be employed by the Sanitary Board and also be a member of the Town Council?" Also if he remains an employee, should he abstain from voting on any matters related to the Sanitary Board?"

FACTS RELIED UPON BY THE COMMISSION

One of the Town Council members, is employed by the Sanitary Board, and has been so employed since 1965. He earns \$500 per month in this position, for which he supplies his own tools and truck.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(h) (i) states in part "no full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with or allow himself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed in the governmental agency."

West Virginia Code Section 6B-2-5(d) states in part "no elected or appointed public official or public employee. . .may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she. . .is employed."

West Virginia Code Section 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 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.

ADVISORY OPINION

West Virginia Code Section 6B-2-5(h)(1) is not applicable because it applies "to" and "binds" only full-time employees, and it is assumed that this individual is not a full-time employee of the Sanitary Board.

Since this individual is not a full-time employee of the Sanitary Board, his position on the Town Council is not in violation of West Virginia Code Section 6B-2-5(h)(1).

As councilman, this individual is a public official who has an interest in the benefits of a contract (i. e., employment with the Sanitary Board) with the governmental body with which he has direct authority. However, there is a specific provision in subsection (d)(1) which states that nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body. Therefore, this individual may be employed by the Sanitary Board and remain a member on the Town Council.

Regarding the councilman's vote on Sanitary Board matters, the Commission is required pursuant to West Virginia Code Section 6B-2-3 to render an advisory opinion on whether an action or proposed action violates the provisions of the Act and would thereby expose the person to sanctions by the Commission or criminal prosecution.

This question however, does not fall within the Act since it does not expose the individual to sanctions by the Commission nor criminal prosecution. Therefore, the Commission is unable to render an advisory opinion on this matter.

However, the Commission would note that West Virginia Code Section 6B-1-2(c) suggests that the council member should disqualify himself from the voting on any matters affecting the Sanitary Board since he is employed there.



Chairman