

ADVISORY OPINION NO. 90-34

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

Chairman of a State Regional Airport Authority

OPINION SOUGHT

1. Whether it is a violation of the Act for a County Commission president who is a realtor to be a member of an Airport Authority?
2. Whether it is a violation of the Act for a member of the Airport Authority to own an engine repair business that contracts with and pays an access fee to the Airport Authority?
3. Whether it is a violation of the Act for a member of the Airport Authority to be employed by an air photography business?
4. Whether it is a violation of the Act for a member of the Airport Authority to be a full-time Colonel in the Air National Guard?
5. Whether it is a violation of the Act for a member of the Airport Authority to own a radio station?
6. Whether it is a violation of the Act for a full-time City Manager to be a member of an Airport Authority?

OTHER FACTS RELIED UPON BY THE COMMISSION

The airport is the center of much potential industrial development and many different issues are being addressed by the Authority in an effort to provide first class development opportunities.

The Authority is currently made up of six members with as many as twenty-one possible. Three members are appointed by the City and three by the County Commission. These two governmental entities provide the bulk of the Authority's funding with the exception of various federal programs and occasional states monies.

Realtor

The President of the County Commission has been a member of the Airport Authority since its inception. This member is a licensed realtor and on occasion has had listings near the airport. His firm is involved in some residential and commercial development of land close to the airport but not contiguous to airport properties.

Engine Repair Business

Another appointed member of the Airport Authority owns a small single and twin engine repair and maintenance business on property located next to the airport and pays an annual access fee to the Airport Authority which was negotiated in 1988.

Air Photography

Another appointed member of the Airport Authority is employed as a pilot for an air photography business, a private firm operating on land next to the airport. The member has no ownership interest in the air photography business and is not involved in any way with the negotiations of the company with the airport.

Air National Guard

Another appointed member of the Airport Authority is a full-time Colonel with the Air National Guard. While the Air National Guard does have some joint use agreements with the Airport Authority, the member in question does not participate in the discussion process between the two. This matter is handled by various offices located in Washington, D.C.

Radio Station Owner

A member of the Airport Authority currently owns and operates a radio station and is an eighteen year member of the City Council. The member is also a licensed realtor but is currently inactive in that field.

City Manager

An appointed member of the Airport Authority is currently the full-time City Manager, in accordance with the procedure established in 1972. The City Manager has no business interests.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no appointed public official...or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he or she may have control... Provided, however, that nothing herein shall be construed to prohibit...a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an elected...public official...or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this subsection is:

- (A) An interest:
 - (i) not exceeding ten percent of the partnership or the outstanding shares of a corporation; or
 - (ii) thirty thousand dollars interest in the profits or benefits of the contract;

West Virginia Code Section 6B-2-5(d)(3) states in pertinent part that... where the provisions of subdivision (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county...or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption.

West Virginia Code Section 6B-1-3(d) states that "immediate family", with respect to an individual, means a spouse residing in the individual's household and any dependent child or children and dependent parent or parents.

ADVISORY OPINION

1. Since neither the County Commission member nor his business have a public contract with the Airport Authority there is no violation of subsection 6B-2-5(d)(1).

2. From the facts presented, it appears that the Commission member's business contracts with the Airport Authority, a governmental body over which he has direct authority.

However, subsection 6B-2-5(d)(1) stipulates that nothing shall prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official recuses himself from deciding, excuses himself from voting and makes a full disclosure of his interest in the contract. It is the Commission's opinion that to be effective the individual must excuse himself from the room while the Airport Authority is voting on a contract involving him or his business.

Therefore, it would not be a violation of subsection 5(d)(1) of the Act for a member of the Airport Authority to own and operate an engine repair business, which contracts with the Airport Authority if he follows the procedures outlined above.

3. It is not a violation of subsection 6B-2-5(d)(1) of the Act for a member of the Airport Authority to be **employed** by an air photography business, since he has no ownership interest in the company nor any interest in the public contract.
4. It is not a violation of subsection 6B-2-5(d)(1) of the Act for a member of the Airport Authority to be **employed** as a Colonel in the Air National Guard, since he has no ownership interest in the Air National Guard nor any interest in a public contract between the two entities.
5. There is no indication that the radio station has a public contract with the Airport Authority. Therefore, it is not a violation of subsection 6B-2-5(d)(1) of the Act for the member of the Airport Authority to own and operate a radio station.
6. There is no indication that the public official contracts individually or through businesses with the Airport Authority. Therefore, it is not a violation of subsection 6B-2-5(d)(1) of the Act for the City Manager to be a member of the Airport Authority.


Chairman