

ADVISORY OPINION NO. 90-44

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 5, 1990

GOVERNMENTAL BODY SEEKING OPINION

An attorney on behalf of a Water Association

OPINION SOUGHT

Whether the provisions of the Act apply to members of a Water Association which is a non-profit corporation?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor represents a Water Association which is a non-profit corporation, and was incorporated by the Secretary of State by a Charter in 1968. The Association is governed by the current provisions of the State Corporation Act and in particular under the provisions of the State Code pertaining to non-profit corporations. The internal affairs of the Association are governed by the provisions of its By-laws, which are subject to modification by the members of the Association, as provided in the By-laws and in the applicable provisions of the State Code.

The Association does not have capital stock, but it does have members. The Association is organized on a non-profit basis for the mutual benefit of its members, and is qualified by the Internal Revenue Service as a non-profit corporation, with a tax exempt status.

The purpose of the Association is to construct, maintain, and operate a water distribution system to supply water for domestic, industrial, and commercial purposes. The Farmers Home Administration is the lending agency which has provided most of the funding for the construction of the water distribution system of the Association.

The Association is a non-profit corporation, and is not the same as a public service district, which would be created by a local county commission, and operated under the provisions of the State Code.

The Directors of the Association are elected by the members of the Association. The Officers of the Association are then elected by the Directors, under the provisions of the By-laws of the Association. As a utility, supplying water for domestic, commercial, and industrial usage, the Association is subject to the regulations of the State Public Service Commission, concerning its rates, financing, and certain policies and procedures in regard to the operation of the Association.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(a) states that the provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

West Virginia Code Section 6B-1-3(i) states that "public official" means any person who is elected or appointed and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning, (iv) inspecting, licensing, regulating or auditing any person, or (v) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

ADVISORY OPINION

It is the Commission's opinion that the Water Association is a non-profit corporation and not a public entity. Therefore, the Act does not cover the Association's members since they do not fall within the meaning of persons identified in provision 6B-2-5(a), nor 6B-1-3(i) which defines a public official.


CHAIRMAN