

ADVISORY OPINION NO. 90-50

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 5, 1990

GOVERNMENTAL BODY SEEKING OPINION

Chancellor of the Board of Directors of a State College System

OPINION SOUGHT

1. Whether an exemption should be granted to the members of the faculty and staff of the Board of Directors of a State College System when they are not in a position to influence a decision to award a public contract for goods or services?
2. Whether an exemption should be granted to the members of the faculty and staff of the Board of Directors when they are in a position to influence the award of a public contract for the purchase of goods and services and have a direct pecuniary interest in such contract as long as the affected employee recuses himself?
3. Whether an exemption should be granted to the members of the Board of Directors of the State College System in instances where the individual Board members recuse themselves from voting on a specific Board action involving a conflict of interest?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Board of Directors of the State College System governs a number of institutions having faculty and support staff members serving the needs of many students. To provide the best education for the students the Board of Directors recruits and employs a broad variety of academicians, scientists, professionals and skilled technicians. Hundreds of administrative, clerical and support staff enhance these professionals' work. The low salary typically received often compels full-time faculty, staff and their spouses to take second jobs.

The State College System has a three-fold mission of providing education, research and service to citizens. To fulfill their educational mission the Board of Directors is required to utilize the services of adjunct faculty members and other professionals who engage in private business. Further, the Board of Directors encourages the full-time faculty members to fulfill their mission of services to the State through private consulting agreements and service contacts with public and private entities. Their research mission requires them to pursue public and private research funds in a continuing effort to improve the health, welfare or prosperity

of the citizens of the State.

In order to maximize their ability to obtain funds, the Board of Directors cooperates with affiliated corporations which can rapidly respond to funding opportunities and when necessary, employs on a part-time basis members of the faculty and staff.

The requestor generally contends that a strict reading of the State Code, Chapter 6B-2-5(d)(1) would place hundreds of the State College System employees and Board members in a potential conflict of interest posture whether the individuals involved recuse themselves or not, and whether or not the individuals would be in a position to influence institutions' decisions. The requestor contends that such an outcome would in effect destroy or severely damage the higher education system of the State.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public official or public employee 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 Section 6B-2-(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift...No official or employee may knowingly accept any gift, directly or indirectly, from a any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected public official...or member of his or her immediate family 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 with the governmental body over which he has direct authority or with which he is employed...

West Virginia Code Section 6B-2-5(d)(3) states in pertinent part that...where the provisions of subdivisions (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, municipality, county school board or other governmental agency, the affected governmental body or agency may make a written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

An exemption, pursuant to West Virginia Code Section 6B-2-5(d)(3) is requested based upon the substantial interference of the operations of the Board of Directors. The number of individuals governed by the Board, the tremendous burden created by the monitoring of potential conflicts (and excessive costs and undue hardship placed upon the Board associated with the monitoring of potential conflicts as well as the cost incurred in seeking individual requests for opinions and exemptions), the interference created in seeking to obtain and retain highly qualified, experienced professionals in the faculty of the colleges in order to meet the goals established by the legislature and the Board substantiate the Board's conclusion that without an exemption available for the faculty and staff members as well as the Board members would create substantial interference with the State College system.

1. The Commission hereby grants a limited blanket exemption pursuant to subsection (d)(3) of the Act, which will apply to the members of the faculty and staff of the State College system when they are not in the position to influence a decision to award a public contract for goods or services. The blanket exemption will be in effect until June 9, 1990, and is based on the grounds of substantial interference and undue hardship to the affected governmental body.

2. The Commission hereby grants a limited blanket exemption pursuant to subsection (d)(3) of the Act, which will apply to the members of the faculty and staff of the State College system when they are in a position to influence the award of a public contract for the purchase of goods or services and have a direct pecuniary interest in such a contract as long as the affected employee recuses himself from the decision making process and disinterested officials are available to make a decision on the award of such contract. The blanket exemption will be in effect until June 9, 1990, and is based on substantial interference and undue hardship to the affected governmental body.

3. The Commission hereby grants a limited blanket exemption pursuant to subsection (d)(3) of the Act, which will apply to the members of the Board of Directors of the State College system in instances where individual Board members recuse themselves from voting on specific Board actions involving a conflict of interest. The blanket exemption will be in effect until June 9, 1990, and is based on the grounds of substantial interference and undue hardship to the affected governmental body.


Chairman