

ADVISORY OPINION NO. 90-69

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Member of a Regional Jail and Correctional Facility Authority

OPINION SOUGHT

Whether it is a violation for a member of a Regional Jail and Correctional Authority to vote on the Authority's purchase of real estate from a non-profit Corporation of which the member is an Ex-Officio director?

OTHER FACTS RELIED UPON BY THE COMMISSION

A member of the Regional Jail and Correctional Facility Authority was appointed to that position by the Governor in 1989. The requestor is also a member of a County Commission and has been designated by the Corporation's by-laws to serve as an Ex-Officio Director of the Corporation. The Regional Authority members will be voting on a decision to purchase real estate from the Corporation.

The Corporation is a non-stock Corporation and the requestor does not hold any ownership interest in the Corporation. Also, the Regional Jail and Correctional Facility Authority member receives no compensation or private gain as a result of being an Ex-Officio Director of the Corporation.

The Corporation's articles of Incorporation state that the objects for which the Corporation is formed are for charitable and public objects and purposes and no other.

In furtherance of the Corporation's charitable and public objects and purposes it may...sell, or otherwise dispose of industrial or commercial sites...and other property, real, personal and mixed.

Furthermore, as stated in the Certificate of Incorporation the Corporation is not organized for profit and no part of its net earnings shall inure to the benefit of any private member or individual.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-1-2(c) states that the Legislature finds that 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, 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 Section 6B-2-5(b)(1) states in pertinent part that...a public official may not intentionally use his office or the prestige of his office for his own private gain or that of another person...

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no appointed public official...or business with which he 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...

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an appointed public official...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 section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.

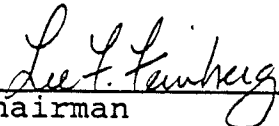
ADVISORY OPINION

It is the Commission's opinion that there would not be a violation of subsection (d)(1) of the Act since the requestor does not have an interest (within the meaning of subsection 5(d)(2)) in the Corporation which is contracting with the Regional Jail Authority.

The Legislature found in subsection 6B-1-2(c) of the Act that a State government and its many public bodies and local governments have many part-time officials 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 from the responsibility of voting or deciding a matter; however when such conflict becomes personal to a particular public official he 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.

However, it is the Commission's opinion that this matter is not personal to the member since neither he, nor an immediate family member will receive any direct pecuniary benefit or private gain as a result of voting on the Corporation's sale of the real estate to the Regional Jail Authority. Furthermore, the member acts as an Ex-Officio Director of the Corporation because of his public position as County Commissioner.

Additionally, since there is no evidence that the public official has intentionally used his or her office or received any private gain as a result of voting on this matter there is no violation of subsection (b)(1) of the Act.

  
Chairman