

ADVISORY OPINION NO. 90-70

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 20, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Prosecuting Attorney

OPINION SOUGHT

a. Whether it is a violation of the Act for a Public Service District Board member to be a candidate for the County Board of Education when the Public Service District supplies services to the County Board of Education?

b. Whether it is a violation of the Act for a member of a Board of Directors of a non-profit corporation to be elected to a position with the County Board of Education when that non-profit corporation is indirectly connected to but not does not contract with the County Board of Education?

c. Whether it is a violation of the Act for an employee of a local power company which contracts with the County Board of Education to supply electricity, to be elected to the County Board of Education?

OTHER FACTS RELIED UPON BY THE COMMISSION

Public Service District

A School Board candidate is a member of the Board of a Public Service District. The candidate acts in a supervisory position for the Public Service District which does business with the County Board of Education and provides water and sewage services to surrounding area schools.

Non-Profit Corporation

A School Board candidate is a member of the Board of Directors of a non-profit corporation which holds title to the County's 4-H camp. The non-profit corporation has an indirect connection with the County Board of Education since it hosts a school-sponsored banquet, permits the use of the camp for school activities and coordinates the County Fair day with the County Board of Education by designating a non-school day for that purpose.

However, there is no indication that there is a public contract between the County Board of Education and the non-profit corporation.

Power Company

An employee of a local power company is a candidate for a member of the County Board of Education. He is currently employed by the local power company with the job title of meter reader. In the performance of his duties, he reads meters, records the results and reports the same to the local office of his employer. The meter reader does not have ownership interest in the Company nor any authority or control to enter into a contract on behalf of the power company.

This power company is the sole source of electric power furnished to the County Board of Education and its various schools.

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 serving in elected 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...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 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-2-5(d)(1) states that no elected or appointed public official...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 has direct authority or with which he or she is employed...

West Virginia Code Section 6B-2-5(d)(2) states that an elected or appointed public official...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

A. If elected as a member of the County Board of Education the individual would have direct authority over that governmental entity.

The candidate does not have any ownership interest in the Public Service District, but has a limited interest in the public contract between the County Board of Education and the Public Service District. For the purpose of this section limited interest is defined as an interest not exceeding 10% of the outstanding shares of a corporation or \$30,000 whichever is the lesser.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Act for the Public Service District's Board member to be elected to the County Board of Education when the Public Service District contracts with the County to provide services, since the Board member has a limited interest in the Public Service District.

The candidate should be mindful of subsection 6B-2-5(b)(1) of the Act which prohibits an elected public official from using the prestige of his office for private gain.

Also, subsection 6B-1-2(c) provides that certain conflicts of interest are inherent in part-time public service. However, when such conflict becomes personal to the 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.

B. The Commission finds that the candidate, if elected would have direct authority over the County Board of Education.

However, since the candidate does not have any ownership interest in the non-profit corporation and there is no indication that there is a public contract between the County Board of Education and the non-profit corporation it would not be a violation of subsection 6B-2-5(d)(1).

Also, subsection 6B-1-2(c) provides that certain conflicts of interest are inherent in part-time public service however, when such conflict becomes personal to the 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.

C. It is the Commission's opinion that it would not be a violation of subsections 6B-2-5(d)(1) and (2) of the Act for an employee of a local power company which contracts with the County Board of Education, to be a candidate and elected as a member of the County Board of Education.

The candidate has a limited interest in the power company, since he is an **employee** with no ownership interest in the company nor any interest in the benefits or profits of the public contract between the local power company and the County Board of Education.

However, pursuant to subsection 6B-1-2(c) of the Act, the candidate if elected to the County Board of Education, 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, when such a matter becomes a conflict and when such conflict becomes personal.

Also, if elected, the Candidate should be mindful of subsection 6B-2-5(b)(1) which prohibits a public official from using his office or prestige for his own private gain or for that of another.


Vice-Chairman