

ADVISORY OPINION NO. 90-88

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Administrator

OPINION SOUGHT

Whether it is a violation of the Act for a County Administrator to be paid for performing bookkeeping services on a part-time basis for a Solid Waste Authority?

OTHER FACTS RELIED UPON BY THE COMMISSION

A County Administrator was appointed in January 1989 by both the County Solid Waste Authority and the County Commission to serve as Secretary-Treasurer and act as a non-member of the Board of Directors for the Solid Waste Authority. This appointment was made to facilitate the transition of the operation of the landfill from the County Commission to the Solid Waste Authority. The County Administrator continues to perform certain bookkeeping services for the Solid Waste Authority, such as accounts receivable billing and collections which she has performed for the landfill since 1983.

In June 1989, the members of the Solid Waste Authority unanimously voted to pay the requestor a monthly salary of \$225 to continue to perform the bookkeeping services. The County Administrator agreed to accept these responsibilities and has performed the services with pay since that time.

The Requestor stated that the County Solid Waste Authority was created by amendments to the statute (WV Code §20-9-1 et seq) in December 1988 and is not regulated or governed by the County Commission. Payments for the accounting services provided by the County Administrator are funded through fees collected at the County landfill. However, if the fees collected are insufficient to cover the costs, the additional necessary money is provided by the County Commission.

The Commission finds that West Virginia Code §20-9-5 called for the County Commission of each County on January 1, 1989, or the solid waste thereof, to transfer all ownership, operation, control and other rights, title and interest in such solid waste facilities, services and programs, and the properties, funds appropriations and contracts related thereto to the County or Regional Solid Waste Authority established by this provision.

Also, West Virginia Code §20-9-6 states in pertinent part that...The expense of any county solid waste Authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses shall be paid by the County Commission from the general funds in the County treasury to the extent that such expenses are not paid by fees, grants and funds received by the Authority from other sources. The County Commission shall have the authority to determine the amount to be allocated annually to the Authority...

The Commission assumes that the County Administrator does not have voice or control over the County Commission or the Solid Waste Authority in the letting of public contracts.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no public employee...may be a party to or have an interest in the profits or benefits of a contract which such employee may have direct authority to enter into, or over which he or she may have control...

West Virginia Code 6B-2-5(h)(1) states that no...full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

West Virginia Code 6B-2-5(h)(3) states that a...full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition against seeking employment with a person who is or may be regulated, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency.

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsection 6B-2-5(d)(1) follows:

The Commission would observe that the County Administrator is a public employee of the County Commission who does not have direct authority or control over the letting of public contracts on behalf of the Solid Waste Authority.

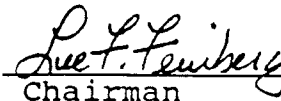
Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(d)(1) of the Act for the County public employee to contract with the Solid Waste Authority to perform certain bookkeeping services on a part-time basis since the County Administrator is not employed by the Solid Waste Authority nor does she have direct authority or control over the Solid Waste Authority's letting of public contracts.

An analysis of the facts presented and the pertinent statutory provisions of subsection 6B-2-5(h)(1) and (3) follows:

However, the Commission finds that subsection 6B-2-5(h)(1) prohibits an employee with policymaking or nonministerial authority from being employed part-time with any person regulated or who may be regulated by her Department.

It is the Commission's opinion that the Solid Waste Authority may be regulated at some point by the County Commission since the County Commission has the authority pursuant to West Virginia Code §20-9-6 to determine the amount of money to be allocated annually to the Solid Waste Authority. Therefore it would be a violation of Subsection 6B-2-5(h)(1) of the Act for the County Administrator to be employed by the County Solid Waste Authority without an exemption pursuant to Subsection 6B-2-5(h)(3).

This provision (Subsection 6B-2-5(h)(3)) allows a full-time public official or employee who may be adversely affected to apply to the Commission for an exemption. In order to receive an exemption the requestor must show that her education and experience is such that the prohibition would, for all practical purposes, deprive her of the ability to earn a livelihood in this state outside of the governmental agency.


Chairman