

ADVISORY OPINION NO. 90-99

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent of a County Board of Education

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a member of a County Board of Education who is employed by a non-profit Association to rent space from the County Board of Education?

OTHER FACTS RELIED UPON BY THE COMMISSION

A member of a County Board of Education is the Executive Director of an Association. The Board member receives a salary for his part-time work as an executive employee of the Association.

The Association is a non-profit organization and not a governmental entity. The Association rents office space from the County on a monthly basis. The office space is located in the County Board of Education central office building.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-1-2(c) states in pertinent part 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...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(d)(1) states in pertinent part that...no elected 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 which such official may have direct authority to enter into, or over which he or she may have control.

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an elected...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 subsection is:

(A) An interest:

(i) not exceeding ten percent of the partnership or the outstanding shares of a corporation;
or

(ii) thirty thousand dollars interest in the profits of benefits of the contract;

OPINION SOUGHT

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

The County Board of Education member has direct authority and control over the letting of public contracts.

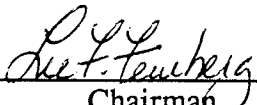
The County Board of Education member is an **employee** of a non-profit Association which has a public contract with the County Board of Education.

However, as an employee of the Association, the Board of Education member has a limited interest in the profits or benefits of the public contract.

For the purpose of this section "limited interest" is defined as a interest not to exceed 10% percent of the outstanding shares of a Corporation or \$30,000 interest in the profits or benefits of the public contract.

Therefore, the Commission finds that it would not be a violation of subsections 6B-2-5(d)(1) and (2) of the Act for a County Board of Education member who is employed by a non-profit Association to rent space from the County Board of Education.

However, the Commission would note that the County Board of Education member should be mindful of subsection 6B-1-2(c) which provides that a part-time public official should seek to be excused from voting or recused from deciding a matter that has become personal to him. The Commission considers a matter to be "personal" when the public official has any pecuniary interest in the contract or is affected in a manner uncommon to other voting public officials.


Chairman