

ADVISORY OPINION NO. 90-106
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Member of a City Board of Park Commissioners

OPINION SOUGHT

Whether the members of a City Board of Park Commissioners are covered by the provisions of the Ethics Act?

OTHER FACTS RELIED UPON BY THE COMMISSION

The City Board of Park Commissioners is a governmental entity established by a special act of the Legislature. The Board members are elected (by the general public) to serve a term of six years. Although the Board members do not receive remuneration for their service on the Board they are considered to be holding public office.

The City Commission was created to establish, own, develop and operate a park system for the benefit, health, safety, welfare, pleasure and relaxation of the inhabitants of the area.

The City Board has the power in part to 1) appropriate and expend funds 2) purchase, hold, own, sell, convey or lease or take lease of real or personal property 3) employ such persons as is necessary for the operation of such property 4) construct, improve, maintain and grade, surface roads, bridges, sewers, sidewalks, public ways or easements and 5) enter into contract agreements, leases, and other obligations that extend beyond one year.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(a) states in pertinent part that...the provisions....apply to all elected public officials...whether full time or part-time, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency...

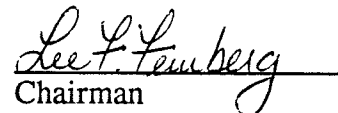
West Virginia Code Section 6B-1-3(i) states that "public official" means any person who is elected or appointed and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning, (iv) inspecting, licensing, regulating or auditing any person, or (v) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

ADVISORY OPINION

It is clear from a plain reading of subsection 6B-2-5(a) that the City Board of Planning Directors are public officials and are covered by the Act.

"Public official" is defined in the Ethics Act at subsection 6B-1-3(i) to include in part an elected person who takes official action with respect to planning or zoning and any other activity where the official action has an economic impact of greater than a de minimis nature on the interest of any person. The members of the Parks Commission were elected to establish, develop and operate a park system. They have the authority to enter into contracts and leases as well as various other powers set forth in the facts which would have an economic impact of more than a de minimis nature on certain members of the community.

Therefore, the Commission finds that the City Board of Planning Directors are public officials and are subject to the provisions of the Ethics Act as set out in subsection 6B-2-5(a).


Chairman