

ADVISORY OPINION NO. 90-138

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 2, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Member of a Board of Directors of a State College System

OPINION SOUGHT

Whether it is a violation of the Act for a State College System Board of Director who is a part-time appointed public official to be associated with a company which bids on contracts let by the State College System?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is a part-time, non-paid appointed public official serving as a member of the Board of Directors of a State College System.

He is also a full-time employee of a Gas Company which operates and produces natural gas and oil. Additionally, he is closely involved on a routine basis in the day to day affairs of a Well Service Company which is a companion company to the Gas Company.

The Well Service Company is a contracting firm that provides drilling, and oil and gas field services. Although the requestor is closely linked to this company, he does not have any ownership interest nor is he employed by this Well Service Company.

The Well Service Company would like to bid on a project being advanced by a specific State College (one which is part of the State College System) to drill a well for natural gas purposes on the campus.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no appointed public official...or a 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 or employee may have direct authority to enter into, or over which he or she may have control...Nothing in this subsection shall be construed to...prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an appointed...public official...or a business with which he 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) not exceeding thirty thousand dollars interest in the profits or benefits of the contract;

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Public Contract

As a Board member of a State College System the requestor may have direct authority to enter into and control over the letting of public contracts for this specific State College.

The requestor does not have an interest in the Well Service Company as meant by the Ethics Act, since he has no pecuniary interest in the company or in the public contract, nor is he an owner or shareholder as defined in subsection 6B-2-5(d)(2).

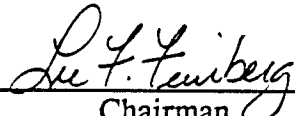
Therefore, it would not be a violation subsection 6B-2-5(d)(1) of the Act for a State College to have a public contract with a Well Service Company with which the Board of Director is associated.

Voting

The Board of Director member should be mindful of subsection 6B-1-2(c) which provides that a public official should seek to be excused from voting on a matter which becomes personal to him. The Commission considers a matter to be "personal" when the public official has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote or would give the appearance of impropriety.

Although, the requestor does not have any pecuniary interest in the profits or benefits of the public contract he is affected in a manner which may influence his vote or would give the appearance of impropriety because of his relationship to the Well Service Company. Therefore, the public official should recuse himself from voting or deciding on any contract between the State College (that requires approval from the State College System) and the Well Service company. To be effective the recusal requires the Board member to excuse himself from the room during the discussion and when the decision on the contract is being made.

Also, although there is no evidence of such the Commission would remind the requestor of subsection 6B-2-5(e) which prohibits a public official from knowingly and improperly disclosing any confidential information acquired by him in the course of his official duties or using such information to further his personal interests or the interests of another.


Chairman