

ADVISORY OPINION NO. 90-154

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Solid Waste Authority Chairman

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a member of a County Solid Waste Authority to sell real estate to a Company which contracts with the Solid Waste Authority in establishing a County landfill?

OTHER FACTS RELIED UPON BY THE COMMISSION

A Company has been granted a certificate of Site Approval and is in the process of obtaining the necessary permits to establish a landfill in the County. Solid waste will be transported to the landfill primarily by railroad. In order to accommodate the estimated number of rail cars traveling to the site each day, the Company will need additional side rails.

A member of the County Solid Waste Authority has given this landfill Company the option to purchase 2.25 acres of land for the purpose of rail car storage. This parcel of land is the closest available tract to the landfill site. The acquisition of this tract of land will eliminate many of the problems facing the Company in their attempt to establish a landfill in the County.

The requestor states that the County Solid Waste Authority Board members are appointed, part-time public officials who do not receive compensation for their service on the Board.

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...when such conflict becomes personal to a particular public official or public employee, 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...nothing herein 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.

ADVISORY OPINION

The Ethics Commission finds that pursuant to subsection 6B-1-2(c) of the Ethics Act, certain conflicts of interest are inherent in part-time public service. This conflict of interest does not preclude the part-time public official from performing his duties or job responsibilities as a public official.

However, the part-time public official should recuse himself from voting or deciding on any matter which has become personal to him. For the purpose of this section "personal" is defined as being 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. Therefore, the member should not vote on any matter which is personal to him and future contracts between the Solid Waste Authority and the landfill Company could be considered personal since he would have an indirect pecuniary interest.

It would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for a member of a Solid Waste Authority to sell real estate to a Company which is establishing a landfill, since this is a private contract and he is not publicly contracting with the Solid Waste Authority.


Vice-Chairman