

**ADVISORY OPINION NO. 91-17**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON APRIL 4, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

A State Commission Chairman

**OPINION SOUGHT**

Whether it is a violation of the Ethics Act for the Chairman of a State Commission to own and operate liquor stores which may conduct business with entities which are regulated by the State Commission?

**FACTS RELIED UPON BY THE COMMISSION**

The requestor is an appointed member of a State Commission and serves as the chairman. Further, the Commission member is a stockholder in a Corporation which was recently awarded a Class A License to operate five Liquor Stores. The requestor owns 33 1/3% of the outstanding shares of stock of the Corporation that has been given this license.

The Corporation will be providing wholesale and retail liquor and wine sales in the northern Counties of the State. An entity which is regulated by the requestor's State Commission is located in that area and will probably purchase wine and liquor from the member's liquor store.

The requestor has stated that pursuant to West Virginia Code Section 19-23-6 the State Commission which he chairs does not have any direct authority, control or influence over the regulated entity's public contracts, budget or other internal matters.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain or that of another person...

West Virginia Code Section 6B-1-2(c) states in pertinent part that...the State government and its many public bodies and local governments have many part-time public officials...serving in...appointed capacities; and that certain conflicts of interest are inherent in part-time service...however, 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...no appointed 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...may have control...Provided, however, 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...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

#### **Private Gain**

Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act, a public official may not knowingly and intentionally use his office or prestige for private gain. The Commission member may not use his status as the Chairman of the Commission to obtain, influence or increase business for his private company from an entity which is regulated by his State Commission.

Therefore, provided he does not **use his influence as a public official** to obtain business for his private company it would not be a violation of subsection (b)(1) of the Ethics Act for the State Commission member to own and operate liquor stores which may conduct business with entities which are regulated by the State Commission.

#### **Public Contracts**

Subsection 6B-2-5(d)(1) of the Ethics Act prohibits a public official from having more than a limited interest in the profits or benefits of a public contract over which he may have **direct authority or control** to enter into.

However, in this instance the public official states that he does not have direct authority or control to enter into a contract on behalf of the regulated entity and his private corporation to sell liquor. Pursuant to West Virginia Code Section 19-23-6, the Commission shall not interfere in the internal business or internal affairs of any licensee.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for him to own and operate liquor stores which may conduct business with entities that are regulated by the State Commission.

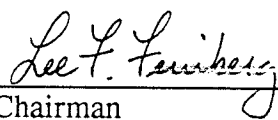
### **Voting**

The Commission Chairman should be mindful of subsection 6B-1-2(c) of the Ethics Act which provides that certain conflicts of interest are inherent in part-time service. However, when such conflict becomes personal to the State Commission Chairman, he 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 that has become "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.

Recusal is defined as refraining from participating in a discussion or decision making procedure. The Commission has determined that in order for the recusal to be effective, the public official must physically remove himself from the room during the discussion and voting process.

Therefore, the Commission Chairman should seek to be recused from deciding or acting on any matter which is related to conducting business with his private liquor stores.

  
Chairman