

ADVISORY OPINION NO. 92-16

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 7, 1992

GOVERNMENTAL BODY SEEKING OPINION

Chairman of a County Solid Waste Authority

OPINION SOUGHT

Is it a violation of the Ethics Act for the Chairman of a County Solid Waste Authority to continue to serve on the Authority if adult stepsons have an interest in a Company which provides garbage collection in the County?

FACTS RELIED UPON BY THE COMMISSION

The requestor was appointed to the board of a County Solid Waste Authority in 1988. Members of the Authority Board do not receive compensation for their service on the Board but are reimbursed for expenses.

In 1989, the requestor's adult step-sons invested in a corporation which owns and operates a hauling company certified to provide residential and non-containerized commercial garbage collection in the County. The requestor has no financial interest in the Corporation.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §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 and do not, in every instance, disqualify a public official from the responsibility of voting or deciding a matter; however, 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 §6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no appointed public official...or member of his or her **immediate family**...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...

West Virginia Code §6B-1-3(d) states in pertinent part that..."Immediate family"...means a spouse residing in the individual's household and any **dependent**...children...

West Virginia Code §6B-2-5(e) states in pertinent part that...no present or former public official...may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

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Public Contracts

The requestor has stated that it is unlikely that the County Solid Waste Authority would ever be a party to a public contract with the step-sons' Company. However, the Commission will address this issue to provide additional clarification and guidance.

Pursuant to WV Code §6B-2-5(d)(1) a public official or a member of his immediate family may not have an interest in the profits or benefits of a public contract over which such official may have direct authority or control. The requestor's step-sons are not considered immediate family members, however, since this subsection includes only **dependent** children in the definition of "immediate family". The requestor's step-sons are not dependent children.

Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for the County Solid Waste Authority to contract with a Company with which the Chairman's step-sons are associated since the Chairman's step-sons are not **immediate** family members and the Chairman has no personal financial interest in the Company.

Voting

West Virginia Code §6B-1-2(c) provides that a public official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal" to that official.

The Commission considers a matter to be "personal" when the public official has any direct or indirect pecuniary interest in the matter, is affected in a manner which may influence his vote, or would give the appearance of impropriety. The Commission has determined that in order for a public official's recusal to be effective he must physically remove himself from the room during the discussion and decision making process.

An interest is not considered "personal" if the interest of the public official in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or class. However, if a matter which **uniquely** affects the Company with which the Chairman's step-sons are associated comes before the Solid Waste Authority, the Chairman should refrain from voting or taking any other action regarding such Company since it could give the appearance of impropriety.

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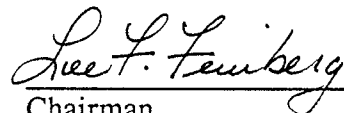
Pursuant to WV Code §6B-2-5(b)(1), a public official may not use his office or its resulting prestige for his own private gain or for the private gain of another. Therefore, the Solid Waste Authority Chairman may not use that position's status or influence to obtain, increase or promote business for the Company with which the Chairman's step-sons are associated.

Confidential Information

The requestor should also be mindful of WV Code §6B-2-5(e) which prohibits a public official from using confidential information acquired during the course of performing official duties to further personal interests or the interest of another person. Therefore, the requestor may not use any confidential information acquired as Solid Waste Authority Chairman to assist the Company with which the requestor's step-sons are associated.

WV Code §20-9-3

West Virginia Code §20-9-3 establishes the current qualifications of Solid Waste Authority Board members and provides, in pertinent part, that "no member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which shall directly affect the member's personal interests." The Commission must note that the Ethics Act does not give it the authority to confer any immunity from the provisions of WV Code §20-9-3. The Commission is limited, by WV Code §6B-2-3, to granting immunity only from potential liability under WV Code §61-10-15.


Chairman