

ADVISORY OPINION NO. 92-47

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 3, 1992

GOVERNMENTAL BODY SEEKING OPINION

A County Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act for a member of a County Board of Education to be appointed to that County's Recreation Commission?

FACTS RELIED UPON BY THE COMMISSION

A Recreation Commission was established pursuant to WV Code §10-2-4. The Commission is funded through allocations made by the County Commission and a City. The County Board of Education provides the use of its facilities as in kind contributions.

The purpose of the Recreation Commission is to administer a system of public recreation within the County, in part by scheduling the use of Board of Education buildings and other properties by outside groups or organizations for recreational purposes.

Pursuant to WV Code §10-2-4 members of the Recreation Commission are appointed by the School Board to serve three year terms of office without compensation.

Prior to his election to the County Board of Education, the requestor was that Board's appointed member of the County Recreational Commission. Since his election to the Board, the requestor's appointment to the Recreational Commission has lapsed and he would like to be reappointed to the position.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-2(c) states in pertinent part that...local governments have many part-time public officials...serving in elected and 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.

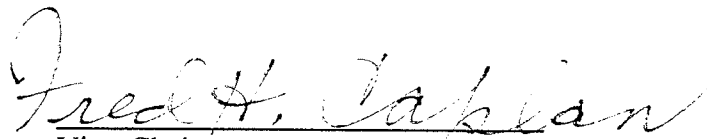
ADVISORY OPINION

In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would per se prohibit a County Board of Education member from being reappointed to the County's Recreation Commission.

The Legislature recognized in WV Code §6B-1-2(c) that certain conflicts of interest are inherent in part-time public service but that such conflicts do not automatically disqualify a person from voting or deciding a matter. However, when such conflict becomes "personal" to a particular public official, he or she should seek to be excused from voting, deciding, or otherwise acting on the matter. 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 when voting 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.

A County Board of Education's decision on the appointment of an individual to the Recreation Commission would be personal to any Board member who is an applicant for the position. Any discussion or vote on the matter would require the member's recusal.

This opinion is strictly limited to an analysis of the facts presented under the provisions of the Ethics Act. The Commission is without authority to provide advisory opinions on the application of other statutes.


Vice Chairman