

ADVISORY OPINION NO. 93-03

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 4, 1993

GOVERNMENTAL BODY SEEKING OPINION

A State Legislator

OPINION SOUGHT

- a. Is it a violation of the Ethics Act for a state Legislator to serve simultaneously on a state Council and a local Council which administer federally funded job training programs?
- b. Is it a violation of the Ethics Act for the requestor, as a member of both the state and local councils which administer federally funded job training programs, to have an ownership interest in a company which may receive a grant for participating in such programs?

FACTS RELIED UPON BY THE COMMISSION

The requestor serves as a member of a local Council and receives no compensation for holding this part-time position. The overall purpose of this Council is to provide policy guidance for, and exercise oversight with respect to, activities under a job training plan formed in partnership with local governments. These job training programs are federally funded.

The local Council and local governments determine the procedures for job training programs and approve the plan, review and monitor such programs, and oversee spending of funds. This local Council must also determine the population to be targeted, the needs of potential workers and employers, decide the types of programs to be offered, and work with the local job service in establishing guidelines for recruitment, assessment, screening and placement of potential workers. This alliance between the local Council and the local governments provides private-sector employers the opportunity to share equal responsibility with the local, state and federal governments in shaping job training projects best suited for that area. By law, the local Council must have a diverse board including private business representatives.

The requestor was also appointed to serve, without compensation, as a part-time member of a state Council. The purpose of the state Council is to coordinate the employment and training programs which are operated by the local Councils across the state and to generally oversee and monitor the activities of these local Councils.

This state Council develops policies and provides oversight of these programs in order to prepare economically disadvantaged individuals and others with barriers to employment for entry into the workforce of the future. It does not operate the job training programs or provide the services directly, but exists solely to plan, coordinate and monitor the provision of such program services offered by the local Councils. By law, the state Council must have representatives from the private sector, community organizations and state and local governments.

The requestor also has a 50% ownership interest in a computer training center which may be eligible for a grant for participating in a job training program.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §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 §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(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she 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: Provided, 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

a. 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 per se prohibits the legislator from serving simultaneously on a state Council and a local Council which establish and administer federally funded job training programs.

The Commission notes that WV Code §6B-1-2(c) provides that a part-time appointed official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal". 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.

Therefore, as a member of the state Council, the requestor should recuse himself from voting, deliberating or taking official action on matters relating to or specifically affecting his local Council.

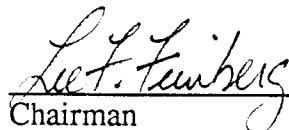
b. Pursuant to WV Code §6B-2-5(d)(1), a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. For the purposes of this section, a limited interest is defined as an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation.

In this instance, the amount of ownership interest that the requestor holds in the computer training center is 50%. However, WV Code §6B-2-5(d)(1) contains an exemption which specifically provides that a part-time appointed public official may have a pecuniary interest in the profits or benefits of a public contract over which he may have direct authority or control provided that part-time public official is recused from deciding or evaluating and excused from voting on such contract and fully discloses the extent of the interest in the contract. Both Council positions are part-time, appointed positions.

Since the local Councils select grant recipients, the requestor would have authority or control over any contract his private firm may enter into with the local Council. However, it would not be a violation of WV Code §6B-2-5(d)(1) for the requestor, as a member of both the state and local Councils which establish and administer federally funded job training programs, to have an ownership interest in a company which may receive a grant for participating in such programs provided he recuses himself and abstains from voting on the grant as outlined above.

The Commission notes that pursuant to WV Code §6B-2-5(b)(1), a public official may not use his office or the resulting prestige for his own private gain or for the private gain of another. Therefore, the requestor may not use his status as a Legislator or as a member of either Council to obtain, increase, influence or promote business for his private company or to obtain favorable treatment for any grant application his private company may seek with the local Council.

This opinion is limited to an analysis of the Ethics Act. The Commission is not empowered to offer an opinion as to whether the Legislator's service on the local Council would violate the constitutional principle of separation of powers.


Chairman