

ADVISORY OPINION NO. 93-46

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 2, 1993

GOVERNMENTAL OFFICIAL SEEKING OPINION

A County Commissioner

OPINION SOUGHT

Is it a violation of the Ethics Act for the County Commissioner to vote on a project which may indirectly affect a family member?

FACTS RELIED UPON BY THE COMMISSION

The requestor has been a member of the County Commission since December 1985.

In June 1990 the County Commission voted unanimously to pass a resolution of inducement to aid in the financing of a project sponsored by a Company through the issuance of Solid Waste Disposal Facility Revenue Bonds. These bonds were to assist in the financing of a waste paper recycling plant to be located within the County.

In December 1990 the County Commission again voted unanimously for a similar resolution that increased the maximum amount of the bonds. Again in January 1993 and in September 1993, the County Commission voted to increase the bond maximum.

Sometime after the passage of the 1993 bond resolutions the company proposing to build the plant took an option on a certain piece of property which will serve as the site for the recycling plant. One of several owners of this property is the mother of the requestor's sister-in-law. The requestor states that he was not involved in any way in the company's site selection and the option on the property was obtained through regular channels of a real estate sale.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected...public official...or member of his...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 that "immediate family", with respect to an individual, means a spouse residing in the individual's household and any dependent child or children and dependent parent or parents.

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

The Ethics Act

Pursuant to WV Code §6B-2-5(d)(1) a public official or a member of his immediate family may not have more than a limited interest in the profits or benefits of a public contract over which the public official has direct authority or control.

However, WV Code §6B-1-3(d) defines "immediate family", with respect to an individual, as a spouse residing in the individual's household and any dependent child or children and dependent parent or parents.

Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for the County Commission Member to vote on a project which may indirectly affect his sister-in-law's parent, since such relations are not included in the definition of "immediate family". Furthermore, under the facts presented, the requestor has no personal pecuniary interest in the contract.

West Virginia Code §61-10-15

West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he may have voice, influence or control over the letting of such contract.

Although the requestor does not have direct authority or control over the selection of the site for the waste paper recycling facility the County Commission did vote to aid in the financing of the project.

The Commission finds that the power of the County Commission to vote on the Solid Waste Revenue Bonds does give the requestor voice, influence or control over the Company's selection and purchase of property to serve as the site for the recycling facility.

However, the mere fact that the requestor's sister-in-law's parent is one of several owners of the property being purchased by the Company for the facility does not afford the requestor a direct or indirect pecuniary interest in the project.

Therefore, it would not be a violation of WV Code §61-10-15 for the County Commission Member to vote on a project which may indirectly affect such a distant family member.

Pursuant to WV Code §6B-2-3, any person acting in good faith reliance on an advisory opinion issued by the Ethics Commission is immune from the sanctions of WV Code §61-10-15, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon such opinion.

The Commission notes that this opinion is limited to an analysis of the facts presented by the requestor.


Chairman