

ADVISORY OPINION NO. 94-07

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 7, 1994

GOVERNMENTAL BODY SEEKING OPINION

A Member of a County Parks and Recreation Commission

OPINION SOUGHT

- a. Is it a violation of the Ethics Act for the requestor to answer questions from or provide information regarding the recreational use of off-highway vehicles and recreational trail management techniques and policies to the County Parks and Recreation Commission?
- b. Is it a violation of the Ethics Act for the requestor to participate in the discussion and decision making process regarding the recreational use of off-highway vehicles and recreational trail management techniques and policies by the County Parks and Recreation Commission?

FACTS RELIED UPON BY THE COMMISSION

The requestor is the Vice-President and General Manager of a franchised company which is engaged in the retail, wholesale and service trade of motorcycles, ATVs, outdoor power equipment and related products. He also owns 39% of the corporation's stock. The company is one of six businesses in the area which provide products and services for this recreational activity.

In 1990 the Requestor was one of nine incorporators of a non-profit Association. He currently serves as the treasurer and is a registered lobbyist for the Association. All officers of the Association are volunteers and serve without pay or compensation. The membership of the Association, comprised largely of individual citizens, is between two hundred and three hundred members locally and over one thousand members statewide. The purpose of the Association is to create and provide adequate, managed public trails and better riding opportunities for off-road motorcycles and ATVs. This Association entered into a contractual agreement with the County Parks and Recreation Commission to develop, maintain, and operate a recreational trail system for off-road motorcycles and ATVs in a County Park operated by the Commission.

In 1991, while still serving as the Association's treasurer, the requestor was appointed by the County Commission to serve as a member of the County Parks and Recreation Commission. He was elected president of that Commission and currently serves in that capacity.

In February 1994, the County Parks and Recreation Commission passed a motion not to renew the contract for trail maintenance with the Association. Further, the Parks Commission passed a motion to open the recreational trail, previously developed and managed by the Association, to the general public. The trail will now be managed by the Parks Commission's Executive Director.

The requestor is extensively experienced in the management of recreational trails for off-highway vehicles and non-motorized trail uses such as hiking and mountain biking. The requestor has completed nationally recognized workshops, participated in many forums sponsored by federal agencies on recreational trail issues and is a nationally recognized expert on recreational trails.

As the Parks and Recreation Commission's president, the requestor would like to share his knowledge and experience with the other members and staff of the Commission to assist in the successful management of the recreational trail.

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. 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-1-2(c) states in pertinent part that... certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; 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.

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 per se which would prohibit the requestor from answering questions from or providing information regarding the recreational use of off-highway vehicles and recreational trail management techniques and policies to the County Parks and Recreation Commission, its Executive Director, or staff. The requestor is extensively experienced in the management of recreational trails for off-highway vehicles and non-motorized trail uses such as hiking and mountain biking. Also, the requestor has completed nationally recognized workshops,

participated in many forums sponsored by federal agencies on recreational trail issues and is a nationally recognized expert on recreational trails. It is reasonable to assume that the requestor was appointed to serve on the County Parks and Recreation Commission because the knowledge and experience he could provide would be a valuable resource to the Commission.

b. The requestor is the Vice-President and General Manager of a franchised company which is engaged in the retail, wholesale and service trade of motorcycles, ATVs, outdoor power equipment and related products. He also owns 39% of the corporation's stock. Further, he serves as treasurer of an Association created for the purpose of creating and providing adequate, managed public trails and better riding opportunities for off-road motorcycles and ATVs.

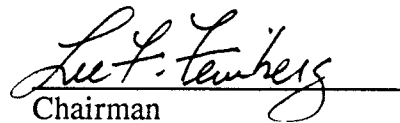
Pursuant to WV Code §6B-1-2(c) a part-time public official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal". The Commission considers a matter to be "personal" when the public official has any direct or indirect pecuniary interest in the matter, 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.

However, an interest is **not** personal to a public official if the matter affects such official only as a member of, and to no greater extent than any other member of, a profession, occupation or class.

Further, the Commission determined in Advisory Opinions #92-31 and #93-46 that prior involvement with specific issues as a private citizen does not, by itself, create a disqualifying interest in those issues when they are dealt with as a board member.

Therefore, it would not be a violation of WV Code §6B-1-2(c) for the requestor to participate in the discussion and decision making process regarding the recreational use of off-highway vehicles and recreational trail management techniques and policies by the County Parks and Recreation Commission.

The requestor should be mindful 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 position as the President of the County Parks and Recreation Commission to influence, obtain, increase or promote his unique personal interests as the owner of a particular company which is engaged in the retail, wholesale and service trade of motorcycles, ATVs, outdoor power equipment and related products.


Chairman