

ADVISORY OPINION NO. 94-11
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON MAY 5, 1994

GOVERNMENTAL BODY SEEKING OPINION

Interim Executive Director of a State Commission

OPINION SOUGHT

Are the members of a State Commission covered by the West Virginia Governmental Ethics Act?

FACTS RELIED UPON BY THE COMMISSION

The Commission was established by Executive Order of the Governor. Its members are appointed by the Governor and collect mileage and meal expenses but do not receive a stipend for their service.

The purpose of the Commission is to oversee the administrative money designated by the federal government for community service projects and to subgrant that money to various programs which the Commission has selected around the state. After the Commission receives proposals for community service projects from what it perceives to be the priority areas in the state, it then selects a number of projects from among the applicants and combines these applications together with a three-year state plan for submission to the Federal Government.

Funding for the projects is not automatic although half of the program money is in "formula" and half is in a "competitive" pot. West Virginia may receive as much as \$360,000 in formula money and can vie for that much again in competitive money. The award of the money depends upon the quality of the state plan and the proposed programs. The State Commission is also authorized, pursuant to the Executive Order of the Governor, to accept funds and in-kind services from state and federal entities.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-3(i) states in pertinent part that... "Public Official" means any person who is elected or appointed and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning...or (v) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

West Virginia Code §6B-2-5(a) states in pertinent part that...The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

ADVISORY OPINION

Pursuant to WV Code §6B-1-3(i) the term "public official" is defined in part as any person who is appointed to office and who is responsible for making policy or taking other official action with respect to administering or monitoring grants or subsidies. The members of the Commission outlined in the request letter are responsible for overseeing administrative money awarded by the Federal Government for community service projects and for selecting and administering subgrants to these programs. They are also authorized to accept funds and in-kind services from both state and federal entities. Such members would be considered public officials since they are responsible for administering and monitoring grants

The West Virginia Governmental Ethics Act applies to all appointed public officials, whether full or part time, who serve in state government or its respective boards, agencies, department and commissions. Therefore, since the members of the Commission would be considered public officials they are subject to the provisions of the Ethics Act applicable to part time appointed public officials.


Chairman