

ADVISORY OPINION NO. 89-33

ISSUED BY THE  
WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

Counsel for

County Commissioner

Opinion Sought

Whether there is a violation of the Ethics Act or West Virginia Code section 61-10-15?

Other Facts Relied Upon By The Commission

A County Commissioner who is a partner in an accounting firm with offices in Wheeling was recently hired by the Northern Panhandle Private Industry Council, (hereinafter NPPIC) a local cooperative venture by business and labor.

The source of funds from which the accounting firm was hired was a State of West Virginia (GOCID) grant of \$40,000 in which the Ohio County Commission participated in obtaining.

Pertinent Statutory Provisions Relied Upon By The Commission

West Virginia Code 6B-2-5(d) states that in part that no elected or appointed public official or employee...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 with the governmental body over which he or she has direct authority...

West Virginia Code 6B-2-5(f) states that no present or former elected or appointed public official or public employee shall during...his public service represent a client...in a specific matter which arose during his or her period of public service or employment and in which he or she personally participated in a decision-making, advisory, or staff support capacity.

### Advisory Opinion

The Commission will not undertake to answer questions on criminal statutes outside the Ethics Act. Thus, you are advised to seek an advisory opinion from the Attorney General's office or the County Prosecutor's office on this matter as it relates to 61-10-15 or other conflict provisions and are specifically invited to review the following cases: Summers Co. Citizens League, Inc. v. Tassos, 367 S.E. 2d 209 (W.Va. 1987); State v. Neary, 365 S.E. 2d 395 (W.Va. 1987).

It is the commission's opinion that this county commissioner, having participated in the decision to seek the grant from the state of West Virginia and then receiving benefits from the contract through his accounting business by being employed by this Council, would be in violation of subsection 5(d)(1).

It is the Commission's opinion that since the Commissioner is a public official whose business has an interest in the profits or benefits of a contract with a governmental body over which he has direct authority, it is a violation of subsection 5 (d)(1) of the Act.

The Commissioner's direct authority is apparent from a review of the grant award contract dated February 20, 1987 which states the agreement is " between the office of the Governor of the State of West Virginia"...and the Northern Panhandle Job Training Consortium and Ohio County Commission, its fiscal agent." (Exhibit A)

The Commissioner is chairman of the County Commission that is acting as fiscal agent for the grant.

Also, the title of the document defines the Northern Panhandle Job Training Consortium as Brooke, Hancock, Marshall, Ohio, Tyler and Wetzel counties, and the agreement is signed by the vice-chairman of the Ohio County Commission.

Furthermore, the application for the \$40,000 planning grant listed the Commissioner and gave his telephone number, as the "contact person." (Exhibit B)

Finally, the Governor's letter of April 21, 1987 notifying the group of the \$40,000 award was directed to the Commissioner at his Commission office address. (Exhibit C)

Therefore, it is the Commission's opinion that the county commissioner's accounting firm may not receive any benefits or profits from a public contract over which the commissioner has direct authority, as required by West Virginia Code Section 6B-2-5(d)(1).

*Lee F. Lemberg*

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Chairman