

ADVISORY OPINION NO. 90-11

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

MARCH 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

Partners in a Law Firm

OPINION SOUGHT

1. Whether it is a violation of the Ethics Act for Partner A in a law firm to receive remuneration for the work performed on County Public Service District projects prior to his being appointed to the County Commission?
2. Whether it is a violation of the Ethics Act for Partner B in the County Commissioner's law firm to receive remuneration from Public Service District projects for legal services individually performed outside of his involvement with the law firm?
3. Whether it is a violation of the Ethics Act for Partner B in the law firm to contract with the Public Service Districts for the future completion of legal work in connection with the Public Service District projects, when the law firm does not receive any portion of the attorney fee?

OTHER FACTS RELIED UPON BY THE COMMISSION

Partner A Appointed to the County Commission

On September 11, 1989 a partner in a law firm (hereafter referred to as Partner A) was appointed to the County Commission. Partner A has a fifty percent partnership interest in the law firm. Prior to his appointment to the County Commission he performed legal work for two different Public Service Districts within the County. This representation was originally based on an oral agreement and later reduced to a written contract. Both public service districts were new districts created by the County Commission for the purpose of obtaining water service for the citizens living in those areas.

In both instances, preliminary letters of commitment from the Farmers Home Administration were obtained, engineering was substantially completed, and considerable work was done. Law Partner A was in the process of obtaining right of ways and doing title examinations when he was appointed to the County Commission. The written contracts for these public service districts identify the remuneration at a set amount approved by the Farmers Home Administration based on the cost of the project and the number of customers being served.

In one Public Service District, fifty-five of seventy titles have been examined and many right of way agreements have been prepared and executed. Several others are in the process of being prepared.

In the second Public Service District, information has not been received from the engineers to determine where right of ways are required, but Partner A has attended numerous meetings with the District board members, engineers, accountants and Farmers Home Administration personnel; and a number of legal instruments have been completed.

The County Commission exercises some direct authority over the Public Service Districts, for example; in creating the Public Service Districts, defining the geographical boundary, appointing three local Public Service District members, the local matching of funds, approving and funding certain Public Service District expenditures.

After being appointed to the County Commission, Partner A has entirely ceased doing any work on these Public Service District projects.

#### **Partner (B)**

After Partner A was appointed to the County Commission, another partner (hereafter referred to as Partner B), has personally taken over the work on these two projects, with the entire process being handled on an individual basis, outside of the law firm.

#### **Contracts**

The contract in each case is written on a Farmers Home Administration form and provides for payment of eighty-five (85%) percent of the attorney fee at such time as a contract for construction of the water system is let and fifteen (15%) percent of the attorney fee upon completion of construction of the water system. Funds for the construction would be provided through federal and state grant funds, bonds backed by the Farmers Home Administration and funds provided by the County Commission.

#### **PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(d)(1) states in pertinent part...no appointed public official...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(d)(2) states in pertinent part that...an appointed public official...or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the

contractor on the public contract involved. A limited interest for the purposes of this section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser...

West Virginia Code 6B-2-4(w) states in pertinent part that...the provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine.

#### ADVISORY OPINION

1. An analysis of the facts presented and the pertinent statutory provisions follows:

a. The County Commission member is an appointed public official with direct authority over certain governmental agencies including the County Commission and the Public Service Districts.

b. Since the public official has a 50% in the law firm, both he and the business have more than a limited interest in the benefits or profits of a public contract with a governmental agency (the Public Service Districts) over which the Commission member has direct authority.

c. However, the contract for services was entered into prior to the time restrictions established by the Act. The provisions of the Act pertain only to actions performed after September 30, 1989 (See, subsection 6B-2-4(w)).

d. Therefore, it is not a violation of subsection 6B-2-5(d)(1) of the Act for the County Commission member to receive remuneration for legal work performed prior to September 30, 1989 as a result of a contact with a governmental agency over which he now has direct authority.

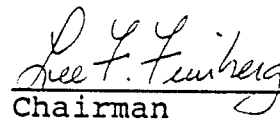
2 & 3. An analysis of the facts presented and the pertinent statutory provisions follow:

a. Based on the facts presented to the Commission, Partner B is not a public official nor public employee. Therefore, it would not be a violation of subsection 5(d)(1) for a private individual to receive compensation for performing legal work for two Public Service Districts.

b. However, it would be a violation of subsection 5(d)(1) for the County Commissioner or a business with which he is associated (the law firm) to have an interest in the benefits or profits of a contract with a governmental body over which the public official has direct authority, (such as the Public Service District) without an exemption.

c. Accordingly, the Commission assumes, in rendering its opinion, that there are no indirect or direct benefits conferred upon the law firm (and therefore, Partner A). However, the Commission suggests that the requestor should review West Virginia Code Section 61-10-15 to determine its applicability to these facts.

d. The affected governmental body may submit a written application for an exemption to the Commission if it can show undue hardship, excessive cost, substantial interference or a loss of quorum would result if the provisions of this subsection are enforced by prohibiting the County Commission member or the law firm (of which he has a 50% partnership interest) from contracting with the Public Service Districts to provide legal services.

  
Chairman