

ADVISORY OPINION NO. 90-180

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

President of a County Board of Education

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a State School Building Authority member to participate in a decision making capacity regarding issues which involve his County?

OTHER FACTS RELIED UPON BY THE COMMISSION

A former president of the State Board of Education is also a member of the School Building Authority. The Building Authority member will have the opportunity to vote on whether to approve a \$13,000,000 needs project for a consolidated school in his home County.

The County Board of Education has approved a site for the consolidation project. This site was selected by the site selection committee and an architect. This location is an equal distance between the two existing school sites.

The County Board of Education feels that the Building Authority member may protest this site for the consolidation since he is an alumnus of one of the high schools scheduled for consolidation and would like the consolidated school to be located on that site. The requestor's concern is that this School Building Authority member may refuse to vote for or approve the needs project if his former high school is not selected as the location or that he may require that site to be selected before voting to approve the money for the project.

The West Virginia State Building Authority was contacted and provided the following information:

Each County submits a request for a needs project grant. The State Building Authority determines which Counties will receive the money and the amount of funds. The State Building Authority may also stipulate how much money is to be spent on a particular project. (For example, a County could receive \$13,000,000 for a consolidation project and the State Building Authority could also specify the **location** of the project.)

The School Building Authority was created under Chapter 62, during the regular session of 1989, to consist of seven appointed members, three of whom are members of the State Board of Education.

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

West Virginia Code Section 6B-1-2(c) states in pertinent part that...the Legislature finds that the state government and its many public bodies and local governments have many part-time public officials serving in elected and appointed capacities; and 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, 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.

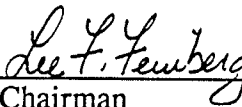
#### **ADVISORY OPINION**

Part-time public officials are not necessarily prohibited from participating in a decision making capacity when there is a possible conflict of interest, since certain conflicts of interest are inherent in part-time public service. It is only when a matter becomes "personal" to the public official that he should seek to be excused from voting or deciding a matter.

The Commission considers a matter to be "personal" when the public official has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote or would give the appearance of impropriety.

The Commission finds that although the member does not have a **pecuniary** interest in the matter, he would be affected in a manner which could influence his vote and his participation in the decision making process would give the **appearance** of impropriety. Since, the member is an active alumnus of one High School which is to be considered for the consolidation site and has many close ties with that community, it would give rise to public perception that the member could not arrive at a decision on the location of the consolidated high school with impartiality.

Therefore, it would be a violation of subsection 6B-1-2(c) of the Ethics Act for a State School Building Authority member to participate in a decision making capacity regarding issues which involve his County since the matter would be "personal" to the member.

  
Chairman