

ADVISORY OPINION NO. 90-183
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON DECEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

Superintendent of a County School System

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a physician who also serves as a Board of Education Member to professionally treat patients who are employees of the Board of Education in Worker's Compensation cases?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Board of Education contributes to the Worker's Compensation Fund on behalf of the Board employees. A member of the County Board of Education is also a private practicing physician.

The physician who also serves as a Board of Education member may be asked to professionally treat patients who are employees of the County Board of Education in Worker's Compensation cases. Certain Worker's Compensation cases require only seeing the patient once, while other cases may require multiple office visits.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected...public official...or business with which he...is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control.

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Public Contract

Pursuant to subsection 6B-2-5(d)(1) of the Ethics Act, a public official may not have an interest in the profits or benefits of a public contract over which he has direct control. This prohibition only pertains to **public** contracts. In this instance, providing the necessary medical treatment would be considered a private contract between the physician and the patient or the Workers Compensation Fund.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for a physician who also serves as a Board of Education Member to professionally treat patients who are employees of the Board of Education in Workers Compensation cases.

Private Gain

The Commission would remind the Board Member that pursuant to subsection 6B-2-5(b)(1) of the Ethics Act, a public official may not use his office or prestige for private gain. Therefore, the physician may not intentionally use his position as a Board Member to solicit school employees as patients.

Confidential Information

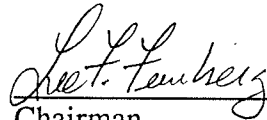
Also, the physician should be mindful of subsection 6B-2-5(e) of the Ethics Act which provides that a public official may not knowingly and improperly use or disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

Voting

Further, subsection 6B-1-2(b) of the Ethics Act provides that a part-time elected official 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 that has become "personal to him". 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.

Therefore, the Board Member should seek to be recused from deciding any matter which may come before the Board of Education (such as Worker's Compensation issues) that involve County Board of Education employees who are patients in his private practice and in which he has a direct or indirect pecuniary interest.

The Commission would note that "recusal" is defined as refraining from participating in the discussion process or deciding a matter. The Ethics Commission has determined that in order to have a legitimate recusal the public official must physically remove himself from the room during the discussion and voting process.


Chairman