

**ADVISORY OPINION NO. 92-21**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON JULY 2, 1992**

**GOVERNMENTAL BODY SEEKING OPINION**

A Member of a Solid Waste Management Board

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a member of a Solid Waste Management Board to conduct a research project for the Board and receive a fee for the days spent on the project?

**FACTS RELIED UPON BY THE COMMISSION**

The requestor is a doctoral student and a member of a Solid Waste Management Board. He occupies a position on the Board required, by statute, to be filled by a person with a technical background. He would like to conduct a research project to establish a standardized protocol for determining the contents of the waste stream. The major emphasis of this project will be to standardize the categories and methodology so that others can accurately measure recyclable and compostable waste in the State.

Further, the project will develop a broad data base for the State from which waste can be measured, along with the effectiveness of recycling/compost programs and attainment of waste reduction goals. The Board member feels that the results of his study will prove beneficial in future planning for waste disposal in the State.

The Solid Waste Management Board member plans to collect data at a County Landfill owned and operated by the Board. The process will involve the purchase of safety equipment and labor to aid in the sorting of waste as it is brought to the landfill. The member would like the Board to subsidize his expenses during the research process and endorse the research as a Solid Waste Management Board project so that he may be compensated at a \$50 per diem rate during the two-week period he is conducting the study. Board members are paid a \$50 per diem for any day spent on Board business.

The data gathered during the project will also aid the requestor's doctoral thesis. However, if the Board hired a consultant at market rates to conduct the proposed project, the cost would be considerably greater. The requestor also serves as a consultant at rates higher than \$50 per day.

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

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected or appointed official or public employee...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: Provided,...however, That nothing herein shall be construed to prohibit...a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

West Virginia Code §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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

## **ADVISORY OPINION**

### **Public Contract**

West Virginia Code §6B-2-5(d)(1) prohibits public officials from having more than a limited interest in a public contract over which they may have authority or control. The Board's hiring of a person to conduct a study is a public contract and if the requestor is hired and compensated for the days he spends on the project he would have more than a limited interest in such contract.

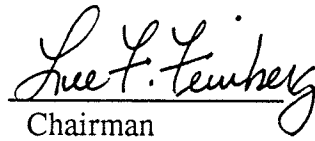
However, W. Va. Code §6B-2-5(d)(1) specifically exempts from its prohibition part-time appointed officials who fully disclose their personal interest in contracts and excuse themselves from deciding or evaluating and voting on the approval of such a contract. Therefore, requestor would not have an interest in a public contract prohibited by W. Va. Code §6B-2-5(d)(1) provided he does not take part in deciding or evaluating whether to expend Board monies on the project, fully discloses his potential financial benefit **and** the potential benefit to his doctoral thesis, and refrains from voting, evaluating or deciding on the proposal.

### **Private Gain**

Pursuant to W. Va. Code §6B-2-5(b)(1) public officials may not use their office or the prestige of their office for their own private gain. The requestor will personally gain both money and assistance in his doctoral thesis if the Board enters into a contract with him to conduct the proposed study.

It is not apparent that the Board would have considered the proposed project if the Requestor had not originally suggested it. Since the requestor is a technical member of the Board, he is in a unique position of being able to persuade the Board to contract for a particular study. At the same time the Board would be deprived of the benefits of his counsel and expertise since he would not be able to evaluate, decide or vote on the proposal.

Because the potential for abuse is too great, it is the opinion of the Commission that it would be an improper use of public office for the requestor to propose a technical study which, if accepted by the Board, would be conducted by the requestor in exchange for financial and academic benefit.

  
Chairman