

ADVISORY OPINION NO. 93-26

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 1, 1993

GOVERNMENTAL BODY SEEKING OPINION

A County Commission President

OPINION SOUGHT

Is it a violation of the Ethics Act for the President of a County Commission to be appointed to an Airport Authority when a family member is employed by that Authority?

FACTS RELIED UPON BY THE COMMISSION

The County Commission appoints three of the nine members to the Board of Directors of an Airport Authority. These three members constitute a majority of the voting power on this Board.

The President of a County Commission would like to be appointed to serve on the Airport Authority's Board of Directors. However, a member of his family is employed as a firefighter/mechanic with the Authority. This family member is over the age of eighteen, is married and is not financially dependent upon the requestor.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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.

West Virginia Code §6B-1-2(c) states in pertinent part that...the State government and its many public bodies and local governments have many part-time public officials and public employees 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 from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, 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.

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any...county officer...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would per se prohibit the requestor from serving as a member of the Airport Authority Board of Directors.

Voting

The requestor, if appointed, should be mindful of WV Code §6B-1-2(c) which provides that although certain conflicts of interest are inherent in part-time service, a public official should not vote on a matter which becomes personal to him. The Commission considers a matter to be "personal" when the public official has any direct or indirect pecuniary interest in the matter, is affected in a manner which may influence his vote or when voting would give the appearance of impropriety. The Commission has determined that in order for a public official's recusal to be effective he must disclose his interest and physically remove himself from the room during the discussion and decision making process.

If the Airport Authority is called upon to consider issues which directly affect the requestor's family member, he should refrain from voting or taking other action regarding these matters since failure to do so would give the appearance of impropriety.

However, in Advisory Opinion #92-11 the Commission determined that the voting prohibition contained in WV Code §6B-1-2(c) does not apply to actions which involve the creation of laws, rules, regulations or policies which affect the public official's or family member's financial interests **as a member of a class**. There is no conflict of interest if the public official or his family member is not pecuniarily affected to a greater extent than any other member of the profession, occupation, group or class.

Therefore, the Commission finds that if the requestor is appointed to the Airport Authority's Board of Directors, he should not vote on any matter that may specifically and uniquely affect his son to a greater extent than other comparable Airport Authority employees.

Private Gain

Pursuant to WV Code 6B-2-5(b)(1) a public official may not use his public office or prestige for his own private gain or for the private gain of another. Consequently, the requestor, if appointed to the Airport Authority's Board of Directors, should not use his official status or influence as a member of that Authority to obtain, increase, or promote the interests of his family member.

West Virginia Code §61-10-15


As previously noted, the President of a County Commission would like to be appointed to serve on the Airport Authority's Board of Directors. However, a member of his family is employed as a firefighter/mechanic with the Authority. This family member is over the age of eighteen, is married and is not financially dependent upon the requestor.

West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he may have voice, influence or control over the letting of such contract.

If the County Commission President is appointed to serve as a member of the Airport Authority he would have voice, influence or control over any Authority contract simply by virtue of his public position. However, in this instance the Commission has determined that the requestor would not have a direct or indirect pecuniary interest in a contract involving the Airport Authority and his family member. The mere fact that the requestor's emancipated son is employed by the Airport Authority does not create a pecuniary interest which would trigger the sanctions of WV Code §61-10-15.

Therefore, it would not be a violation of WV Code §61-10-15 for the County Commission President to serve as a member of the Airport Authority's Board of Directors.

The Commission would note that any person acting in good faith reliance upon a written advisory opinion of the Commission is afforded an absolute defense to any criminal prosecution under WV Code §61-10-15 for actions taken in good faith reliance upon such opinion.


Vice Chairman