

ADVISORY OPINION NO. 99-08

Issued On March 4, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Public Service District Board** candidate asks whether his former associations with the Board prevent him from serving on the Board.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a practicing attorney who helped establish the PSD and did its legal work for a number of years. He ceased working for the PSD six years ago and since then has represented private clients in matters before and against the PSD.

The Requester is also the co-founder, 50% owner and president of a State regulated, but privately owned, Public Service Corporation. The service area of this private Corporation has remained virtually unchanged over the years, while that of the PSD has expanded and could eventually overlap that of the Corporation.

The Requester explains that eight to ten years ago the PSD and the Corporation discussed the possibility of the PSD acquiring the Corporation. No action was taken as a result of those discussions and the Requester represents that there are no immediate plans for the Corporation to sell its business.

The Requester asks whether his prior association with the PSD and his current ownership interest in the Corporation preclude him from consideration for a vacancy which exists on the PSD's board.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 61-10-15 states in pertinent part that...It shall be unlawful for any member of any county or district board...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.

West Virginia Code 6B-2-5(g)(1) provides in pertinent part that... No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

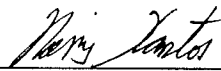
- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed regulation;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

ADVISORY OPINION

No provision of the Ethics Act would disqualify the Requester from serving on the PSD's board because of his former association with the PSD or his ownership interest in a privately owned Public Service Corporation. However, the Ethics Act would restrict his actions as a PSD board member in regard to matters which would have a financial impact on the Corporation in which he has a substantial ownership interest.

The Ethics Act would require him to recuse himself from taking part in the PSD board's discussion, deliberation or vote on matters affecting that Corporation. The Act would also prohibit his use of confidential PSD information to benefit the Corporation. As a Board member, he could no longer represent clients before the PSD.

In addition, the Requester must take into account the provisions of WV Code 61-10-15, a criminal misdemeanor statute which prohibits certain county personnel from having a personal financial interest, directly or indirectly, in a contract, purchase or sale over which their public position gives them voice, influence or control. The PSD's acquisition of a business in which one of its board members had an ownership interest would be at odds with WV Code 61-10-15. In the event that the PSD wanted to consider the issue of acquiring the PSC in which the requester has an ownership interest, it would be necessary for the requester to resign from the PSD.


Chairman