

ADVISORY OPINION NO. 98-01

Issued on February 5, 1998 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Member of State Board

OPINION SOUGHT

Is it a violation of the Ethics Act if a member of a State Board simultaneously serves as its interim executive director?

FACTS RELIED UPON BY THE COMMISSION

The executive director of a State Board has submitted a resignation. This will leave that agency with no day-to-day leadership. The Board plans to conduct a nationwide search for a permanent replacement but needs an interim director immediately.

At the present time the Board is immersed in several major projects and litigation, all of which require someone to attend to the Board's affairs on a more regular basis. At present, the Board has no executive staff and only one clerical position.

One of the members of the Board has offered to act as interim executive director until a permanent replacement is chosen. He has no interest in serving in that capacity on a full-time and/or permanent basis. Counsel for the Board inquires whether it may compensate this member, including reimbursement for expenses, pending the hiring of a full-time executive director.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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 or public employee 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 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she 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: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: 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.

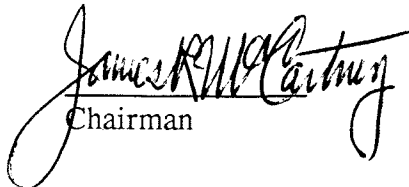
ADVISORY OPINION

In Advisory Opinion 92-42 the Ethics Commission held that the Chairperson of a State Board could simultaneously serve and receive compensation as the Acting Executive Director of that Board on a temporary basis. That decision was contingent upon the Board's continued good faith effort to retain a permanent Executive Director.

In this instance, the Commission finds that the departure of the prior Director, the lack of any other executive staff to substitute on an interim basis, and the number of major issues pending with the Board all create an exigent situation. This threat to the proper continued functioning of the Board justifies the temporary hiring of one of its members to serve as an interim Executive Director for reasonable compensation and expenses. Such a hiring would not violate the Act's prohibition against use of office for private gain.

The Commission notes that WV Code 6B-1-2(c) provides that a part-time public official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal". The Commission's legislative rules include in a definition of "personal" matters those in which a public official has any direct or indirect pecuniary interest.

Since the Member who may serve as the Acting Executive Director has a clear financial interest in his compensation, his expense reimbursement and the eventual hiring of a permanent replacement, he should recuse himself from any votes or discussion by the Board on those matters. This limitation does not preclude him from deliberating and voting as any other Board member on other issues that come before the Board while he may serving as a temporary Executive Director.


Chairman