

COPY

ADVISORY OPINION NO. 2000-41

Issued On January 4, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Health Member** asks whether he may vote on matters which might affect a not for profit health care corporation on whose board he serves.

FACTS RELIED UPON BY THE COMMISSION

The Board of Health will be considering whether to transfer or sell certain of its health care delivery activities. If the Board of Health chose to do so, one of the service providers which might be interested in assuming or acquiring those activities, and their assets, is partially owned by a not for profit health care corporation on whose board the Health Board Member also serves.

The Member asks if he may take part in the discussion and vote on these issues and whether it would be a violation of the Ethics Act or WV Code 61-10-15 if the Health Department sold or transferred its public assets to the service provider partially owned by the health care corporation.

CODE PROVISIONS RELIED UPON BY COMMISSION

Legislative Rules 158-9-2.1 provides in part that ... A public official or public employee may not vote on or decide a matter ... when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety.

WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or 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 ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control ...

WV Code 61-10-15 states in 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 ... [over] which as such member he may have any voice, influence or control ...

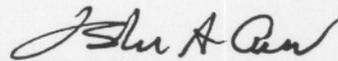
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The Commission's Legislative Rules state that public servants may not vote on or decide matters in which they have a personal financial interest or which affect them in a manner which may influence their public actions or would clearly give the appearance of impropriety.

The Commission finds that the Member has no personal financial interest in the not for profit corporation on whose board he serves - just as he has no personal financial interest in the County Health Department. The Commission further finds that the transfer of the Department's activities and assets is not a matter which affects him, by virtue of serving on the corporation's board, in a manner which would influence his actions or give the appearance of impropriety.

Therefore, it would not be a violation for the Member to take part in the Health Board's discussion and vote on whether to dispose of its health care delivery activities. Nor would it be a violation of either the Ethics Act or WV Code 61-10-15 for the Department to sell or transfer its public assets to the service provider partially owned by the corporation, since the Member has no personal financial interest in the corporation and its contracts.

However, the Commission notes that the Member should be recused from the Department's consideration of which health care service will assume its health care delivery activities, if the service provider partially owned by the corporation on whose board he serves is among those being considered.



Chairman