

## ADVISORY OPINION NO. 2005-09

Issued On June 2, 2005 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

A County School Superintendent asks (1) if his appointment to the Board of Directors of a private, non-profit organization will subject that organization to the requirements of the Ethics Act, and (2) whether there is any prohibition in the Act against him serving on this organization's Board when the Board of Education leases property to the organization.

#### FACTS RELIED UPON BY THE COMMISSION

A private, non-profit organization leases property from the County Board of Education. The property, adjacent to a high school, is being leased at a nominal amount with the expectation that the private organization will construct and operate a facility for vocational and adult education on the property. The private organization's by-laws provide that the County School Superintendent will be included on its board of directors. The Superintendent receives no compensation for serving on this private board and has no personal financial interest in the organization.

#### CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(a), *Ethical standards for elected and appointed officials and public employees*, provides, in pertinent part:

*Persons subject to section.* -- The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

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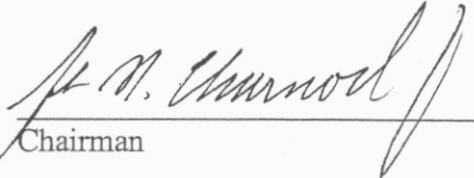
In Advisory Opinion 2003-11, this Commission determined that the non-profit corporation on which the requester serves was not a governmental agency subject to the Ethics Act. Although the corporation receives substantially all of its funding from or through government sources, it nonetheless retains its status as a private organization.

The requester essentially asks if his service on the corporation's board of directors, as a public official, affects the status of this corporation. In Advisory Opinion 90-80, this Commission concluded that the Ethics Act does not apply to a private, non-profit corporation, even though the entire board of directors was appointed by the City Council.

Similarly, the fact that a public servant subject to the Ethics Act serves on an entity's Board of Directors does not change the legal status of that private corporation. Although it may appear incongruous that an entity which operates largely on government funding is not subject to the conflict of interest provisions in the Ethics Act, expanding the Act to include private organizations receiving public funds is a matter to be determined by the Legislature.

Because the Board of Education leases property to this private organization for a nominal annual fee, the Board has an interest in this organization's activities. The Superintendent's representation of the School Board on the Board of Directors of this private organization is not contrary to any prohibition in the Ethics Act.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked.

  
Chairman