

ADVISORY OPINION NO. 98-16

Issued on June 4, 1998 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

County Board of Education Members

OPINION SOUGHT

May a Board of Education pay off a loan incurred by private citizens to pay for improvements to Board of Education property?

FACTS RELIED UPON BY THE COMMISSION

Several years ago, a group of athletic boosters for a County High School undertook, with the approval of the School Principal, various improvements to the School's athletic facilities. The Boosters submitted a bill for that work and were reimbursed by the School Board.

The following year the Boosters obtained a line of credit at a local bank to finance additional improvements which were made to the School's athletic facilities. Part of this indebtedness was paid off by Booster fund-raising activities.

During the next year, County voters approved an excess levy for the benefit of the school system. One of the items on the levy provided for improvements to indoor and outdoor athletic facilities. The High School receives an annual allocation of fifty thousand dollars (\$50,000) from the levy and its first year allocation was used to pay contractors who worked on improvements to the School's athletic facilities undertaken by the Boosters.

Prior to the levy's passage, the Board lacked the resources to fund all the improvements it deemed necessary at that High School's athletic facilities. The Boosters borrowed the money to make the improvements and assumed personal responsibility for the debt. Proceeds from the Booster's fund-raising activities have been insufficient to pay off the loan as planned and the Boosters are personally liable for the remaining debt of approximately sixty three thousand dollars (\$63,000), including approximately thirty five hundred dollars (\$3,500) in interest.

The Board has determined that all the funds borrowed by the Boosters were used for necessary improvements to the High School's athletic facility and would, therefore, like to use the High School's current levy allocation for athletic facilities to pay off the outstanding loan, if doing so will not violate the Ethics Act.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

In Advisory Opinion 97-13 the Commission was asked to rule on a Board of Education's request to pay off a private loan taken out by citizens to build an athletic facility. In that case, the Board of Education allowed the private group to build on its property with the express condition that "no portion of the cost will be borne by county or state funds". The Board also explicitly stated that the facility was "intended as a gift for the school system."

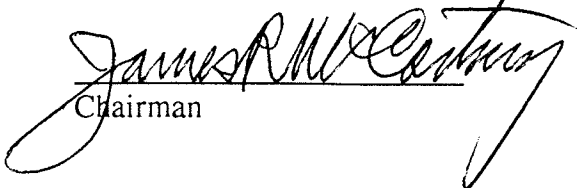
The Commission held that since the express understandings of the parties did not create any legal obligation for the Board to pay off the loan, then the Board members would violate the Act's prohibition against use of office for private gain of another if it gratuitously paid the loan.

In the current case, however, there was no such explicit understanding that the construction was a gift. The School Board has represented that if funds had been available to perform the work that was done, it would have paid for the work. In fact, the Board has, on two prior occasions, provided payments toward the improvements. The private citizens did not wish to wait for several years to complete the improvements and took action to provide all of the funding and work in the first year.

The Commission finds that these facts establish not a gift to the School Board but rather a prepayment for capital improvements that the Board itself intended to provide as funds became available. Therefore, the Board of Education members would not violate the Ethics Act if they vote to use the school's levy allocation for athletic facilities to pay off the remaining balance owed on the loans.

Similarly, since no member of the Board is associated with the loan, as debtor or creditor, there is no direct or indirect financial interest involving an application of WV Code 61-10-15.

The Commission points out that this opinion is limited to a consideration of whether the proposed action would violate the Ethics Act and WV Code 61-10-15 since it has no authority to interpret any other provision of law. Therefore, this opinion may not be relied upon as an interpretation of any school law, including laws relating to expenditures of levy funds, purchasing, or competitive bidding regarding construction projects for the benefit of county school systems.


Chairman