

ADVISORY OPINION NO. 97-13

**Issued on May 1, 1997 by the
WEST VIRGINIA ETHICS COMMISSION**

PUBLIC SERVANTS SEEKING OPINION

Members of a County Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act if School Board Members vote to pay a debt owed by private citizens?

FACTS RELIED UPON BY THE COMMISSION

This request deals with another facet of the situation considered by the Commission in Advisory Opinion 97-11. Both opinions deal with members of a school athletic booster club who took out a personal loan for materials and donated labor to construct public restrooms, weight rooms, and a locker room on property owned by the County Board of Education.

At the time of construction, the boosters expected the proceeds of future school fund-raising activities to pay the construction debt. Circumstances beyond the control of the boosters effectively deprived them of that source of income before the loan was fully repaid and there remains a balance of \$8,500 of the original \$20,000 loan. The boosters have asked the Board to pay off the balance owed on the loan.

While the Booster Club willfully constructed the facility on school property and intended it as a gift for the school system, ownership of the facility is still a question that may not be resolved without litigation.

In Advisory Opinion 97-11 a Board Member who is also a loan officer at the bank which made the loan, asked for guidance on whether he could participate in any action by the Board regarding the boosters' request for loan payment. In that opinion the Commission held he should not vote on the matter. The opinion also held that if it was determined that the Board already owned the facility then WV Code 61-10-15 would not be violated if the remaining members voted to pay the loan balance.

The remaining Board Members are now concerned to establish whether they would violate any provision of the Ethics Act if they vote to pay off the loan even if it is determined that the Board already owns the facility.

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.

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The Ethics Act, at WV Code 6B-2-5(b), prohibits public servants from using their position for their own personal private gain or the private gain of another.

In Advisory Opinion 97-11, the requester provided information that when the Boosters group first approached the Board about construction of the facility, the Board agreed and amended the Comprehensive Facilities Plan by passing a motion with the added explicit statement that "no portion of the cost will be borne by county or state funds." In this request the Board Members explicitly state that the facility was "intended as a gift for the school system".

The Commission recognizes the desire of the Board to relieve the boosters from unintended personal liability for their gift to the school system. However, in the absence of a legal determination that the Board has an obligation to do so, the Commission finds that it would be a violation for the Board to relieve the boosters of their personal debt by giving them \$8,500 in public funds.


Chairman