

ADVISORY OPINION NO. 95-32

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 3, 1995

GOVERNMENTAL BODY SEEKING OPINION

A Local Emergency Planning Committee

OPINION SOUGHT

Whether members of a Local Emergency Planning Committee are subject to the provisions of the West Virginia Ethics Act?

FACTS RELIED UPON BY THE COMMISSION

Local Emergency Planning Committees (hereinafter referred to as LEPC) were established by the Federal Emergency Planning and Community Right-to-Know Act of 1986. The Governor of each state established a State Emergency Response Commission and local emergency planning districts. Each of these districts has a LEPC. The requesting LEPC is comprised of public officials, industry representatives, and interested members of the public. The industry representatives and the general public are non-paid volunteers and all members are appointed by the County Commission.

The purpose of the LEPC is to develop and implement emergency plans for their specific planning districts.

Membership on the LEPC is a part-time, unpaid position. The LEPC budget is small and consists of grants from the State Emergency Management Commission, the Federal Emergency Management Agency, and the County Commission.

The County Commission serves as the fiscal agent for the LEPC. The LEPC does not enter into contracts on its own but makes recommendations to the County Commission for action. The LEPC does act as administrator of various grants it may be awarded.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-3(i) states that "public official" means any person who is...appointed and is responsible for the making of policy or takes official action...with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning, (iv) inspecting, licensing, regulating or auditing any person, or (v) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

West Virginia Code §6B-2-5(a) states that 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...

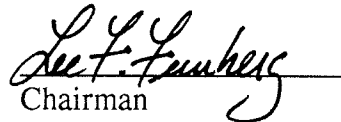
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The requester has asked whether the members of the LEPC are covered by the provisions of the Ethics Act. Pursuant to WV Code §6B-2-5(a), the Ethics Act's code of conduct applies to all public officials and employees in "county...governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency." In this instance members of the LEPC are appointed by the County Commission, the County Commission serves as the fiscal agent and the Commission enters into contracts on behalf of the LEPC. The Commission finds that the LEPC would be considered a public entity.

Since the Ethics Act applies to all public employees and public officials, the next logical question is whether LEPC members would be considered public employees or public officials. Clearly, since the LEPC members are not paid for their service, they are not "employees" as that term is used in the Ethics Act.

However, West Virginia Code §6B-1-3(i) provides in part that a "public official" is any person who is appointed and who is responsible for the making of policy or takes official action with respect to administering or monitoring grants or subsidies. As previously noted, the members of the LEPC are appointed by the County Commission. Further, the purpose of the LEPC is to develop and implement emergency plans and the LEPC acts as the administrator of various grants it is awarded to fulfill this mandate. Consequently, the members of the LEPC fall within the definition of "public official" as that term is used in the Ethics Act.

Therefore, the Commission finds that members of the LEPC are part-time appointed public officials serving on a public entity and, as such, are subject to the applicable provisions of the WV Ethics Act.


Chairman