

ADVISORY OPINION NO. 93-32

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 2, 1993

GOVERNMENTAL BODY SEEKING OPINION

A Potential Candidate for a County Commission

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Commission member to lease property to a regional Solid Waste Authority?

FACTS RELIED UPON BY THE COMMISSION

A Regional Solid Waste Authority serves five counties in the northern area of the State. Since the 1960's the Authority has been operating the sanitary landfill on leased property owned by the requestor. Also, by September 1993, the Authority will enter into a ten year lease for a transfer station on this property.

The requestor is considering becoming a candidate for the office of County Commissioner. As a County Commission member, the requestor would have the authority to vote on the appointment of one member to the sixteen member Regional Solid Waste Authority since each of the five County Commissions appoint one member to the Authority.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-2(c) states in pertinent part that...the State government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

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.

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public 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 the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control...

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

Ethics Act

The requestor is considering becoming a candidate for the office of County Commissioner. The requestor leases his property to serve as a sanitary landfill to a multi-county Solid Waste Authority. This Solid Waste Authority serves five counties, including the requestor's county. If elected to the County Commission, the requestor would have the authority to vote on the appointment of one member to the sixteen member Regional Solid Waste Authority.

Pursuant to WV Code §6B-2-5(d)(1) a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. The requestor's lease agreement for the sanitary landfill project is one in which he has a direct pecuniary interest. However, neither the requestor nor the other County Commission members have direct authority or control over the award of contracts let by the Regional Solid Waste Authority.

Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for a County Commission member to lease his property to the Regional Solid Waste Authority.

West Virginia Code §6B-2-5(b)(1), provides that a public official may not use his public office or resulting prestige for his own private gain or for the private gain of another. Therefore, the requestor should not use a position on the County Commission to influence, obtain, increase, or promote his personal interests as a contractor with the Solid Waste Authority or any other entity.

Further, WV Code §6B-1-2(c) provides that a part-time elected official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal". The Commission considers a matter to be "personal" when the public official has any direct or indirect pecuniary interest in the matter, is affected in a manner which may influence his vote, or when voting would give the appearance of impropriety. The Commission has determined that in order for a public official's recusal to be effective he must physically remove himself from the room during the discussion and decision making process.

Therefore, as a member of the County Commission, the requestor should recuse himself from voting, deliberating or taking official action regarding the Solid Waste Authority which may affect his lease with the Authority. This would include voting on the County Commission's appointment to the Solid Waste Authority.

WV Code §61-10-15

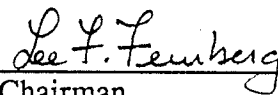
West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he may have voice, influence or control over the letting of such contract.

As previously noted, the requestor would like to seek a position as a member of the County Commission and holds a lease agreement with the Solid Waste Authority for the use of his property as a sanitary landfill. This agreement is one in which the requestor has a direct pecuniary interest. Although the County Commission does not have direct authority or control over the decision to award this lease, the Commission does appoint one member to the Solid Waste Authority.

The Ethics Commission finds that the power of the County Commission to vote on the appointment of one member to the sixteen member Solid Waste Authority is not sufficient to give the requestor voice, influence or control over the Solid Waste Authority's contracts and lease agreements. Consequently, the requestor's position as a County Commissioner does not give him the degree of control contemplated by WV Code §61-10-15.

Therefore, it would not be a violation of WV Code §61-10-15 for the requestor to serve as a member of the County Commission and to lease property to a regional Solid Waste Authority.

Pursuant to WV Code §6B-2-3, any person acting in good faith reliance on an advisory opinion issued by the Ethics Commission is immune from the sanctions of section fifteen, article ten, chapter sixty-one, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon such opinion.


Chairman