

ADVISORY OPINION NO. 93-48

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 2, 1993

GOVERNMENTAL OFFICIAL SEEKING OPINION

Member of a County Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act for a member of a County Board of Education to represent his own child in a Citizen's Appeal?

FACTS RELIED UPON BY THE COMMISSION

The requestor is a member of a County Board of Education. He feels that actions taken by a teacher and administrator at a school attended by his children violate both county and state education policies.

Both the County Board of Education and the State Department of Education have established citizen appeal procedures which afford individual parents who feel that their children's rights are being violated an opportunity to seek redress for their grievance.

The appeal process has three levels pertaining to county policies and four levels pertaining to state policies. Level I involves an informal conference and subsequent decision by the school principal. The Level II decision is made by a county administrator serving as a representative of the County Superintendent of Schools. Level III involves an appeal to the County Board of Education. Level IV appeals, with regard to any state policies, involves the office of the State Superintendent of Schools.

The requestor wishes to represent his children as their parent through this appeal process but would not participate in any vote at a Level III proceeding since such proceedings require action by the County Board of Education of which he is a member.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(g)(1) provides in pertinent part that no elected ... public official ... shall, during his or her public service or public employment or for a period of six months

after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations appear, in a representative capacity before the governmental entity in which he or she serves or served ... in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- ... and
- (E) To influence the expenditure of public funds.

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.

ADVISORY OPINION

West Virginia Code §6B-2-5(g) prohibits certain public servants from appearing in a representative capacity before their governmental agencies both while they serve and for six months after leaving that agency. The Ethics Commission has determined, however, that this prohibition does not prevent a public servant from representing the interests of his own minor children before the agency in an administrative appeal procedure designed to be open to all parents of children in the school system.

Subsection (5) of WV Code §6B-2-5(g) provides that a public servant who would be adversely affected by the prohibition against representation before one's current or former agency may apply to the Ethics Commission for an exemption "when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency." The Commission finds that this indicates that "representation", as that term is used in section 5(g), refers to representation of a commercial nature, not to representation on behalf of the public servant's own minor child which does not involve a fee for the service.

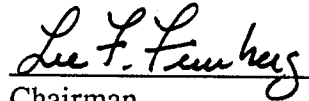
Therefore it would not be a violation of WV Code §6B-2-5(g)(1) for the requestor to represent his children in Levels I, II and III of the citizen's appeal procedure.

Voting

The requestor is correct in his understanding that he should not participate in any actual vote of the School Board at any Level III proceeding. West Virginia Code §6B-1-2(c) provides that a public official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal" to that official.

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 matter which may influence his vote, or when voting would create 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.

The interests of his children in the final outcome of the appeal process clearly constitute a personal conflict of interest for the requestor. Therefore, pursuant to WV Code §6B-1-2(c), he may not participate in any other manner at any level of the citizen's appeal. He should take care not to discuss the case with Board members outside the Level III hearing when he appears formally in a representative capacity.


Chairman