

**ADVISORY OPINION NO. 92-13**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS**

**ON MAY 7, 1992**

**GOVERNMENTAL BODY SEEKING OPINION**

The Director of a State Agency on behalf of an Advisory Board Member

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a member of certain Higher Education Departments to be appointed to serve on an Advisory Board which may consider proposals for funding submitted by those Departments?

**FACTS RELIED UPON BY THE COMMISSION**

A State Agency has established an Advisory Board to provide advice and make recommendations to the Director of the Agency on issues pertaining to health care.

The Advisory Board will also review proposals for pilot Wellness Programs to be funded by the Agency. These pilot programs would propose programs designed to assist in the containment of health care costs. After the proposals are evaluated by the Advisory Board, programs will be selected and funding provided by the State Agency.

A Member and former Chairman of the Advisory Board (hereinafter referred to as the "requestor") is an employee of two Higher Education Departments. It is likely that a Wellness Program proposal will be submitted to the State Agency from at least one of those Departments. As an employee of these Higher Education Departments, the requestor will not be directly responsible for submitting the proposals to the State Agency but it is likely that he will be involved in those Wellness Programs at some level.

**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...have many part-time public officials...serving in...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...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...may not knowingly and intentionally use his... office or the prestige of his...office for his...own private gain or that of another person...

West Virginia Code §6B-2-5(e) states in pertinent part that...no present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

### **ADVISORY OPINION**

In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would per se prohibit the requestor from serving on the Advisory Board.

#### **Voting**

However, WV 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 manner which may influence his vote, or when voting would create the appearance of impropriety. However, an interest is not considered "personal" if the interest of the public official in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or class. 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.

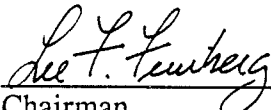
If the Advisory Board is called upon to consider Wellness Program proposals submitted by the Higher Education Departments with which the requestor is associated, the requestor should refrain from voting or taking any other action regarding the selection of those Program proposals. Failure to do so could give the appearance of impropriety.

#### **Private Gain**

Pursuant to WV Code §6B-2-5(b)(1), a public official may not use his office or its resulting prestige for his own private gain or for the private gain of another. Therefore, the requestor's official status or influence as an Advisory Board Member may not be used to improperly promote any Wellness Programs submitted by the Higher Education Departments with which s/he is associated.

**Confidential Information**

The requestor should also be mindful of WV Code §6B-2-5(e) which prohibits a public official from using confidential information acquired during the course of performing official duties to further personal interests or the interests of another person. Therefore, the requestor may not use any confidential information acquired as an Advisory Board Member to assist the Higher Education Departments in preparing their Wellness Program proposals.

  
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Chairman