

ADVISORY OPINION NO. 92-31

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 6, 1992

GOVERNMENTAL BODY SEEKING OPINION

A County School Board Member

OPINION SOUGHT

Is it a violation of the Ethics Act for the former president of a non-profit corporation to serve as a County Board of Education member when such corporation, and the individual, were plaintiffs in a lawsuit against that County Board of Education?

FACTS RELIED UPON BY THE COMMISSION

The requestor was a member and President of a non-profit corporation which was created by a group of citizens contesting certain school board decisions in the county. The corporation and the requestor in his individual capacity initiated a lawsuit against the County Board of Education challenging the Board's consolidation plans and procedures.

The requestor was elected to the County Board of Education on May 12, 1992 and immediately resigned his position with the corporation. Subsequently, the plaintiffs dismissed the lawsuit against the County Board of Education.

However, in its answer filed in response to the lawsuit, the County Board of Education requested that it be awarded the costs and fees associated with the defense of the litigation. That issue regarding potential liability for costs and fees has not been resolved.

The requestor inquires as to what, if any, restrictions these facts place on his ability to serve as a Board of Education member.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-2(c) states in pertinent part that...the State government and...local governments have many part-time public officials...serving in elected... 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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of a county board...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

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 per se prohibits the requestor from serving as a member of the County Board of Education.

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 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.

If the School Board is called upon to decide whether to pursue, compromise, or abandon its claim for costs and fees associated with the lawsuit filed by the Requestor and the organization he formerly led, the Requestor should recuse himself from such discussion and decision. Failure to do so would give an appearance of impropriety since his potential liability for such costs and fees is a direct personal pecuniary interest in that matter.

Nothing in the facts outlined above reveal other matters in which the Requestor would have a "personal" interest such that he should not vote, decide or otherwise take official action on as a Board member. For example, the Requestor's involvement in an organized effort opposing the Board's consolidation procedures and policies does not disqualify him from voting, deciding or otherwise taking an official role as a Board member in determining those procedures and policies during his term as a Board member. Prior involvement in issues as a private citizen or as a candidate does not, by itself, create a disqualifying "personal" interest in those issues when they are dealt with as a Board member.

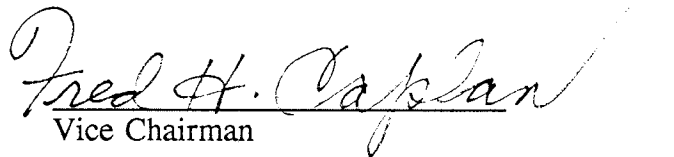
Private Gain

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 may not use his status as a member of the County Board of Education to improperly eliminate or reduce any financial liability he may have to the Board.

West Virginia Code §61-10-15

West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer or member of a county board 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 when he may have voice, influence or control over the letting of such contract. Any person who violates this provision is guilty of a misdemeanor and subject to removal from office.

Although the Requestor has a pecuniary interest in whether the Board pursues its claim for costs and fees associated with defending a lawsuit filed by the Requestor, this claim is not a contract and therefore is not within the scope of WV Code §61-10-15. Nothing in the facts provided by the Requestor indicate that he has a pecuniary interest in any contract with the Board over which he might have voice, influence or control.


Vice Chairman