

ADVISORY OPINION NO. 92-32

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 3, 1992

GOVERNMENTAL BODY SEEKING OPINION

Executive Director of an Authority

OPINION SOUGHT

Is it a violation of the Ethics Act for an Authority's Board members and employees to also serve on the Board of a non-profit Foundation?

FACTS RELIED UPON BY THE COMMISSION

Several Authority Board members and employees would like to serve on the Board of a non-profit Foundation. This Foundation was created for the sole purpose of generating, holding and disbursing money for the Authority's projects. Currently the major role of the Foundation is to hold federal funding granted to the Authority.

These funds are utilized for all aspects of Authority endeavors but are not used to subsidize Authority employee compensation packages. Further, the requestor has stated that Authority Board members are not compensated for their service and similarly members of the Foundation would not receive compensation for service on this Board.

The Commission notes that the non-profit Foundation is not regulated by 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(h)(1) states in pertinent part that...no full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

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 Authority Board members and employees from also serving on the Board of a non-profit Foundation.

Authority Board Members

Pursuant to WV Code §6B-2-5(h)(1), full-time public officials or employees who exercise policymaking, regulatory or nonministerial authority may not seek employment with any person who is or may be regulated by their governmental agency. Although the individuals included in this request are Board members or employees of the Authority and as such their responsibilities may include policymaking, regulatory and nonministerial authority, the non-profit Foundation is not regulated by this Authority.

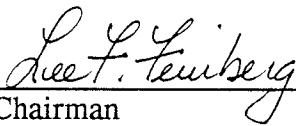
Therefore, it is not a violation of WV Code §6B-2-5(h)(1) for the Authority's Board members and employees to serve on the Board of the non-profit Foundation.

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

Foundation Board Members

The Commission notes that the restrictions established in the Ethics Act as outlined above apply only to Board members and employees in their capacity as public servants with the Authority.

The Commission finds that the non-profit Foundation does not fall within the scope of the Ethics Act. Neither the activities of the Foundation nor the actions of the Board members of such Foundation are subject to the code of conduct established by in the Act. Consequently, the Ethics Commission does not have jurisdiction over matters relating to the nonprofit Foundation.


Chairman