

ADVISORY OPINION NO. 91-43

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1991

GOVERNMENTAL BODY SEEKING OPINION

Chairman of an Authority

OPINION SOUGHT

Whether members of an advisory task force are considered public officials and thus subject to the provisions of the Ethics Act?

OTHER FACTS RELIED UPON BY THE COMMISSION

A State Authority is an autonomous division of a State Department and is responsible for administering the certificate of need program and setting hospital rates in the State.

A task force is being created pursuant to West Virginia Code Section 16-29B-19A which provides that the State Authority must create a task force to **advise** them on the development of a methodology to implement a cost-based rate review system.

One member of the task force is appointed by the governor, one member is designated by the president of the Senate, one member is selected by the speaker of the House of Delegates, and six members of the task force are appointed by the State Authority.

To implement this new review system, the State Authority will require the advice and expertise of representatives from the hospital industry, third party payers, consumers of health care services, financial experts and others. This task force would not have the authority to promulgate regulations or establish policy for the State Authority, but would make **recommendations** regarding the implementation of a rate review system.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION


West Virginia Code 6B-1-3(i) states in pertinent part that... "Public Official" means any person who is... appointed and **who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both**, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning, (iv) inspecting, licensing, regulating or auditing any person, or (v) any other activity where the official action has a greater than a *de minimis* nature on the interest or interests of any person.

West Virginia Code 6B-2-5(a) states in pertinent part that... The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

ADVISORY OPINIONS

The Commission previously determined in Advisory Opinion No.91-37 which was issued on May 2, 1991 that members of an informal task force are not considered public officials. The members of the task force serve as **advisors** to the State Authority and do not have the authority to promulgate regulations or establish policy.

Therefore, members of the State Authority task force would not be considered public officials and would not be subject to the provisions and requirements established by the Ethics Act, by reason of their service as members of the task force alone.


Vice-Chairman