

ADVISORY OPINION NO. 91-90

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 21, 1992

GOVERNMENTAL BODY SEEKING OPINION

A State Legislator

OPINION SOUGHT

- a. Is it a violation of the Ethics Act for a Legislator to be an unpaid board member of a citizens group?
- b. Is it a violation of the Ethics Act for a Legislator to be a paid employee of a citizens group organizing a statewide political lobbying campaign?

FACTS RELIED UPON BY THE COMMISSION

A Legislator is considering either an unpaid board membership or a paid employment position with a citizens group which is organizing a statewide political lobbying campaign. While serving as a Legislator, the requestor may introduce and advocate legislation or related amendments and request recorded votes that would advance the group's political agenda.

Although the citizens group would sponsor other activities, the primary focus will be on state government and bringing about change according to the group's political goals. A major portion of the group's effort will be a grassroots lobbying campaign directed toward legislative change. Activities would include developing a legislative scorecard which would rate elected officials of state government according to the group's political agenda.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE PROVISIONS

West Virginia Code §6B-2-5(b)(1) provides in pertinent part that a public official may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office...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 §6B-1-2(c) contains a finding by the Legislature that state government and its many public bodies...have many part-time public officials...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...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(i) provides that Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

ADVISORY OPINION

A. Position as Unpaid Board Member

The usual and customary duties of a Legislator include introducing legislation, voting on legislation, and requesting recorded votes. Since W.V. Code §6B-2-5(b)(1) provides that performance of usual and customary duties associated with a public office **without compensation** does not constitute use of office for private gain, the Requestor would not violate that section of the Ethics Act by merely accepting an unpaid position as a board member of the organization.

In Advisory Opinion No. 90-28, the Commission held that it was not a violation of the Ethics Act for a State Delegate to also act as a member of a Library Board. The Commission finds that such an activity is analogous to an unpaid board membership with a citizens' group.

B. Paid Employee

Voting

West Virginia Code §6B-1-2(c) provides that conflicts of interest are inherent in part-time public service but that the existence of a conflict of interest should not, by itself, disqualify those public officials from voting or deciding a matter. Rather, such officials should only refrain from voting or taking action on matters that may be personal to them individually.

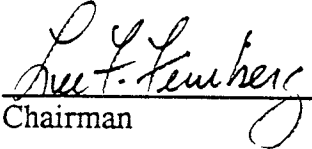
A public official's interest in a matter is not "personal" if the official is affected as a member of, and to no greater extent than any other member of, a profession, occupation or class. The Requestor would not have to refrain from voting on a bill that favored the interests of his or her employer if the bill affected other similarly situated employers in the same fashion.

The Requestor is also reminded that members of the Legislature can obtain immunity from any potential violation of W.V. Code §6B-2-5 if they follow the procedures set forth in W.V. Code §6B-2-5(i). Failure to follow W.V. Code §6B-2-5(i), however, does not result in an automatic violation of the Ethics Act.

Private Gain

In order to determine whether the Requestor would violate the Ethics Act by accepting paid employment with the citizens' group, it is necessary to closely examine what services the Requestor would be contracting to render. We recognize that an employment relationship alone does not violate the Ethics Act or impose restrictions on the actions of an elected official.

It would be a violation of the Ethics Act for the Legislator to enter into an employment contract which provided payment in exchange for introducing and advocating legislation in the legislature or for requesting recorded votes.


Chairman