

ADVISORY OPINION NO. 90-31

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 5, 1990

GOVERNMENTAL BODY SEEKING OPINION

Executive Director of a Planning and Development Council

OPINION SOUGHT

Whether it is a violation of the Act for three members of a Regional Council's Executive Committee to also be Board of Directors for a County Committee on Aging?

OTHER FACTS RELIED UPON BY THE COMMISSION

A Planning and Development Council was formed pursuant to the Regional Planning and Development Act of 1971 (Chapter 8, Article 25, West Virginia State Code). Membership on the Planning and Development Council is identified in the legislation. Public sector membership includes the President of the County Commission, or his designee, and the Mayor, or his designee of each county and municipality within the region.

The Regional Council is also designated as an "Agency on Aging" and as such, receives funds from the State Commission on Aging. The Council has responsibility for the management, monitoring, and disbursement of these funds to other subgrantees or providers at the county level. At present, each of the local providers are local committees on aging or non-profit organizations.

The situation in which the requestor seeks an advisory opinion deals with three Board of Directors of a specific County Committee on Aging. This organization receives funds by subcontract from the Area Agency on Aging. The Agency's policy board is composed of the Regional Council's Executive Committee.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-1-2(c) states that...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 Section 6B-2-5(b)(1) states 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 constituent services, without compensation, does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

It is the Commission's opinion that it is not a violation for three Board of Directors of a County Committee on Aging to also be members of a Regional Council Executive Committee which monitors, manages, and disburses funds to subgrantees (i.e. Counties).

However, the Board of Directors should be mindful of subsection 6B-1-2(c) which requires a public official to seek to be excused, recused from deciding or otherwise relieved of acting as a public representative charged with deciding or acting on a matter when such conflict becomes personal to that particular public official.

There is no indication that the public officials are using their office or prestige with either Board for their private gain in violation of subsection 5(b)(1).

Also, there is no indication of a violation of subsection (d)(1) of the Act since neither agency contracts with the public officials, their businesses, or immediate family members.


CHAIRMAN