

ADVISORY OPINION NO. 90-80

ISSUED BY

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Attorney for a Private, Non-profit Corporation

OPINION SOUGHT

Whether Board of Director members of a private, non-profit Hospital Corporation are subject to the provisions of the Ethics Act?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Hospital was incorporated in September 1985. By ordinance in September 1985 the City approved the transfer of all assets used in the operation of the Hospital to the City Building Commission. By an agreement dated June 1986, the City Building Commission leased all the real property, including the building and fixtures to the Hospital. In June 1986 the City Building Commission, by Bill of Sale, sold all personal property to the Hospital.

As a result of this series of transactions the operation and ownership of the Hospital was transferred from the City to the Hospital Corporation.

Although the Hospital is now operated by a private, non-profit corporation, the members of the Board of Directors are appointed by the City Council.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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 municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency...

West Virginia Code Section 6B-1-3(h) defines a public employee in pertinent part as any full-time or part-time employee of any governmental body...

West Virginia Code Section 6B-1-3(i) defines a public official as any person who is elected or 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 an economic impact of greater than a de minimis nature on the interest or interests of any person.

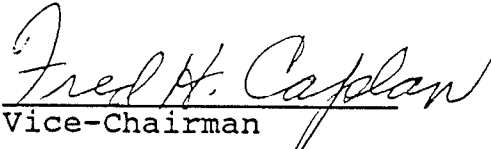
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Subsection 6B-2-5(a) of the Act states that certain public employees and public officials are covered by the Act and subject to the minimal standards of ethical conduct set out in the Act.

It is the Commission's opinion that the members of the Hospital's Board of Directors are clearly not public employees because they are not employed in a full or part-time capacity with a governmental body.

Although the members of the Board of Directors may be, in the broadest sense of the word, "public officials" due only to the fact that they are "appointed", the provisions of the Act are not applicable because they do not serve in a state, city, or municipal government nor take official action as required by the provisions of the Act. The Hospital is a private, non-profit corporation, and not a political subdivision.

Therefore, the Commission finds that since the members of the Board of Directors of the nonprofit, private Hospital Corporation do not serve in a state, city or municipal government capacity they are not subject to the provisions of the Ethics Act as set out in subsection 6B-2-5(a).


Fred H. Caplan
Vice-Chairman