

ADVISORY OPINION NO. 90-93

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Attorney on behalf of a group of public employees

OPINION SOUGHT

Whether it is a violation of the Act for public employees to receive a fee and be reimbursed for expenses for being "facilitators" with a State Project?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Legislature appropriated money to a State Department for implementation of the "West Virginia School Board Effectiveness Project" (hereafter referred to as WWSBEP). The project as implemented would entail the assessment of the corporate effectiveness of participating County School Boards, the development of a comprehensive profile of each Board's performance (i.e. certain research-based indicators) and the development and implementation of improvement plans for each County Board.

Rather than implement the Project itself, the State Department entered into an agreement with the School Boards Association (SBA) to implement the WWSBEP in participating counties, to include the selection and training of facilitators and provide materials. The School Boards Association is a voluntary, nonprofit, nonstock organization comprised of County School Boards. It is not an instrumentality of the State, but County Boards of Education are permitted by West Virginia Code §18-5-4 to join if they choose to do so.

Essential to the success of the project are sixteen "facilitators", who are assigned to work with the participating school boards in all phases of the project. One facilitator is assigned to each board. Part of the money sought and received from the Legislature was for payment of the services of "facilitators" (\$750 per person per Board) and for the reimbursement of their travel and related expenses (a maximum of \$500 per person).

The facilitators were chosen because of their knowledge and their ability to work with Board members. Most of the facilitators are employed in some form of state government, but not necessarily with the State Department that received the money for the project.

However, only one public employee has direct authority or control over the letting of the public contracts with facilitators. This individual selected the other fifteen facilitators. That employee has elected not to receive any fee for acting as a facilitator. Therefore, the Commission will exclude this individual from its consideration when rendering an opinion.

In gaging the services and time required of each facilitator, the SBA has estimated that each would initially spend 2 to 3 hours with a County Board as it completes its assessment. Preparation for assessment would also occupy 2 hours of each facilitator's time. A subsequent "feedback" session with the board has been estimated to require 2 to 3 hours of preparation. Finally, it has been estimated that a facilitator would spend 2 to 3 hours in assisting a board to develop an improvement plan; this step would require 2 to 4 hours of preparation.

The facilitators will receive \$750 for each Board to which they are assigned after all phases of the project are completed (i.e. the assessment stage, the feedback session and the development of an improvement plan). If all steps are not completed the remuneration is based upon the number of completed phases.

Expenses of each facilitator are reimbursed in an amount not to exceed \$500 per county for mileage, lodging, meals, supplies and related expenses incurred during the three steps of the project. Since the County Boards of Education generally meet for such purposes after work hours and because the sessions are held in the home Counties, these expenses are deemed reasonably necessary.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public employee 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...

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no public employee...may be a party to...a contract which such employee may have direct authority to enter into, or over which he or she may have control...

ADVISORY OPINION

The Commission finds that the "facilitators" who are public employees do not have any direct authority or control over the letting of their contracts on behalf of the State Department.

Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(d)(1) of the Act for public employees to contract with a State Department to receive remuneration and expenses for participating as "facilitators" in the Project.

Although there is no indication of a violation at this time, the public employees should be mindful of subsection 6B-2-5(b)(1) of the Act which prohibits a public employee from using the prestige of his or her office for private gain (i.e. using his State employment or prestige to be named as a facilitator).


Chairman