

ADVISORY OPINION NO. 90-95

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Attorney on behalf of a County Solid Waste Authority

OPINION SOUGHT

- a. Whether it is a violation of the Act for a County Solid Waste Authority to contract with a Railroad Company that employs a member of the Solid Waste Authority?
- b. Whether a member of a County Solid Waste Authority should vote on a matter when it is "personal" to him?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County elected to form a County Solid Waste Authority, pursuant to West Virginia Code 20-9-1, et. seq., in 1989. Two members of the Authority were appointed by the County Commission, one each by the Health Department, the Department of Natural Resources and the Soil Conservation District.

The Authority has been formulating various plans required by statute. A Company has requested a certificate of site approval for a proposed "Class A" solid waste disposal facility to be located within the County.

This proposed solid waste disposal facility would entail the shipment of coal, by rail, from a tipple located on the site of the proposed facility to other areas, and return shipments of solid waste.

A member of the County Solid Waste Authority is employed by the Railroad Company that operates the rail lines accessed by this site. This employee is a Supervisor in the Signal Maintenance and Construction Department of the Railroad Company. The County Solid Waste Authority member serves as a rule examiner, on a safety committee (as do all other employees), in regard to the Company's compliance with rules. The Railroad employee owns approximately 20 shares of Company stock (valued at approximately \$700) but has no management participation.

Additionally, the Commission understands that the Solid Waste Authority has adopted Roberts Rules of Order which states in §44 regarding voting procedures that...No member should vote on a question in which he has a direct personal or pecuniary interest not common to other members of the organization. For example, if a motion proposed that the organization enter into a contract with a commercial firm of which a member of the organization is an officer and from which contract he would derive personal pecuniary profit, the member should abstain from voting on the motion.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no appointed public official...or business with which he is associated may...have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he or she may have control. Provided, however, that nothing herein shall be construed to prohibit...a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an appointed public official...shall not be considered as having an interest in a public contract when such a person has a limited interest as a...shareholder...of the business which is the contractor on the public contract involved. A limited interest for the purposes of this subsection is:

- (A) An interest:
 - (i) not exceeding ten percent of...the outstanding shares of a corporation; or
 - (ii) not exceeding thirty thousand dollars interest in the profits or benefits of the contract;

West Virginia Code Section 6B-1-2(c) states in pertinent part that...certain conflicts of interest are inherent in part-time service...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.

ADVISORY OPINION

a. An analysis of the facts presented and the pertinent statutory provisions of subsections 6B-2-5(d)(1) and (2) follows:

As an appointed part-time public official for the County Solid Waste Authority, the Board member has direct authority and control over the letting of public contracts.

A business (the Railroad Company) with which the Authority member is associated (as an employee and minor shareholder) has an interest in the profits or benefits of a public contract over which the appointed public official may have direct authority to enter into or over which he may have control.

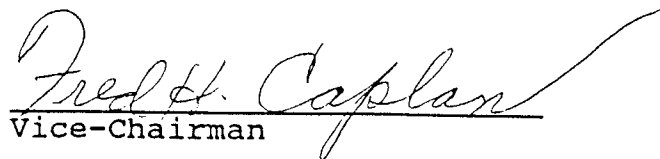
However, since the public official is an **employee** of the Company, owning 20 shares valued at approximately \$700 which is less than 10% of the issued stock in the railroad company he has a limited interest in the profits or benefits of the public contract.

Pursuant to subsection 6B-2-5(d)(2) of the Act "limited interest" is defined as 10% or less of the outstanding shares of stock issued by a Company or \$30,000 interest in the profits or benefits of the public contract.

Therefore, the Commission finds that it is not a violation of subsection 6B-2-5(d)(1) of the Act for a County Solid Waste Authority to contract with a Railroad Company that employs a County Solid Waste Authority Board member who has a limited interest.

b. Voting as a Part-time Official: However, the Commission would note that subsection 6B-1-2(c) provides in part that although conflicts of interest are inherent in part-time service the public official 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 which has become personal to him.

It is the Commission's opinion that the matter has become personal to the Solid Waste Authority member since he has a direct pecuniary interest (by ownership of his stock in the Railroad Company) not common to other members of the organization. Therefore, the Authority Member should abstain from voting on or deciding any matter affecting the Railroad Company.


Fred H. Caplan
Vice-Chairman