

ADVISORY OPINION NO. 90-103
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Prosecuting Attorney

OPINION SOUGHT

- a. Whether it is a violation of the Act for a County Board of Education member to be **employed** with a Company which supplies natural gas at wholesale prices to a utility company which then supplies natural gas at retail prices to various County Board of Education sites?
- b. Whether it is a violation of the Act for a County Board of Education member to be a full-time **employee** of a Company which supplies natural gas services to numerous County Board of Education gas site locations?

OTHER FACTS RELIED UPON BY THE COMMISSION

A County Board of Education member is employed in a supervisory position with a Gas Company, which supplies gas at the wholesale price level to a utility company which in turn supplies natural gas at the retail level to various County Board of Education locations.

Until April 1989, another County Board of Education member was an employee of a Gas Company. This company supplies natural gas at wholesale levels and at retail levels to various County Board of Education sites. However, the County Board of Education member has left this position and is now a full-time employee of a local Union. There is some question as to whether this Board member was in violation of the Act.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected...public official...or business with which he is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control...

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an elected...public official...or a business with which he is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor 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 partnership or 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-2-4(v) states in pertinent part that...the provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine...

ADVISORY OPINION

a. The Commission finds that as an elected member of the County Board of Education, the Board member has direct authority and control over the County Board of Education contracts.

However, pursuant to subsection 6B-2-5(d)(2), since he is an **employee** of the wholesale Gas Company, the County Board of Education member has a limited interest in the benefits or profits of the public contract between the County Board of Education and the retail Gas Company.

For the purpose of this section limited interest is defined as an interest not exceeding 10% of the outstanding shares of stock issued by a corporation or an interest less than \$30,000 in the profits or benefits of a public contract.

Therefore, the Commission finds that it would not be a violation of subsections 6B-2-5(d)(1) and (2) of the Act for the County Board of Education to contract with a retail Gas Company which purchases natural gas from a wholesale corporate entity which employs a County Board of Education member.

b. First, the Commission would note that the questioned conduct in this case regarding the Board member's employment with a Gas company occurred **prior to September 30, 1989** (through April 1989) which is the date after which the Commission has jurisdiction to consider whether actions constitute violations of the Act.

Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(d)(1) and (2) of the Act for the County Board of Education to contract with a Gas Company which previously employed a County Board of Education member.


Chairman