

ADVISORY OPINION NO. 90-120

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Superintendent of Schools

OPINION SOUGHT

Whether it is a violation of the Act for a Superintendent of a County to also serve in the capacity of Director and Treasurer of a Federal Credit Union which includes in its field of membership, employees of the school district?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Superintendent of Schools is the chief administrative officer of a County School District. This superintendent also serves as Director and Treasurer of a federal credit union which includes in its field of membership, employees of the County school district.

As a Director of the Federal Credit Union, the requestor attends monthly meetings to transact business, review expenditures and delinquencies, and approve items requiring Board action. As a board member the requestor does not approve individual member loans and has no direct contact with the individual members. The Director is elected to this position for a two-year term by the membership. The Credit Union is managed by a full-time, paid manager.

The requestor also holds the position of Treasurer of the Federal Credit Union and is compensated at the rate of \$4,800 per year (or \$400 per month). His duties as Treasurer include preparing the annual budget and preparing monthly financial statements.

There are no formal contracts between the County School District and the Federal Credit Union. However some facilitation of communication between member employees and the credit union occur in the form of access to the internal mail system and inclusion in the district's telephone system for which the district is reimbursed.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states that a public official may not knowingly and intentionally use his office or the prestige of his office for his own private gain...

West Virginia Code 6B-2-5(h)(1) states that no full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

ADVISORY OPINION

It is the Commission's opinion based on the facts presented that the County Superintendent of Schools did not knowingly or intentionally use his position for private gain (i.e. to be elected Treasurer of the Federal Credit Union and receive \$4800 per year). Therefore, it is not a violation of subsection 6B-2-5(b)(1) of the Act for a Superintendent of a County School District to also serve in the capacity of Director and Treasurer of a Federal Credit Union.

Subsection 6B-2-5(h)(1) prohibits a full-time public employee with policy-making or non-ministerial authority, from accepting employment with any person regulated by his Department. "Employment" is loosely defined in part as services rendered by a public employee as an independent contractor.

It is not necessary to reach a decision as to whether the employee's acting as a Treasurer of a Federal Credit Union for pay constitutes employment since the Superintendent's governmental body does not regulate the Federal Credit Union. Therefore, it is not a violation of subsection 6B-2-5(h)(1) for a Superintendent of a County School District to also serve in the capacity of Director and Treasurer of a Federal Credit Union.


Chairman