

ADVISORY OPINION NO. 90-125

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

Director of a County Emergency Ambulance Authority

OPINION SOUGHT

Whether it is a violation of the Act for a County Emergency Ambulance Authority to contract for an Individual Retirement Account program for their employees with an insurance company when a member of the Ambulance Authority Board of Directors will act as an agent for the contract through an insurance agency which he owns?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Emergency Ambulance Authority would like to offer an Individual Retirement Account program to their employees. To establish this program the Ambulance Authority would contract with an insurance company to provide this service.

A member of the Ambulance Board of Directors is the owner of an insurance agency. The estimated profit for the Board member, for acting as an agent in this program is approximately \$600 per year.

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 or she 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...Provided: 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...or a business with which he or she 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;

ADVISORY OPINION

The Commission finds that the member of the Board of Directors of the County Ambulance Authority has direct authority and control over the letting of the Authority's public contracts.

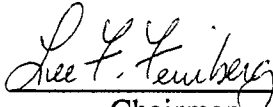
The Director is associated with a business that has an interest in the profits or benefits of a public contract between the Authority and the Insurance agency. However, since the Director will be acting as an agent in this contract he will receive a \$600 commission per year. Therefore, he will have a limited interest in the profits or benefits of the public contract.

For the purpose of this section "limited interest" is defined in part as an interest not exceeding \$30,000 in the profits or benefit of the public contract.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for a County Ambulance Authority to contract for an Individual Retirement Account program with an insurance agency which utilizes a member of the Board of Directors as an agent in the contract.

Furthermore, the second proviso of subsection 6B-2-5(d)(2) states that even if a part-time appointed public official (such as the Board member in this case) has an interest in the profits or benefits of a public contract over which he has direct authority, it would not constitute a violation of the Ethics Act when the official recuses himself from voting or deciding a matter and fully discloses his interest in such contract.

The Commission would note that the Ambulance Authority Board member should be mindful of subsection 6B-2-5(b)(1) which prohibits a public official from using his office or prestige of his office for his own private gain (i.e. using his office to secure the public contract for the insurance agency which he represents).



Chairman