

ADVISORY OPINION NO. 90-126

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

Executive Secretary of a Parks Commission

OPINION SOUGHT

Whether a part-time appointed public official who recuses himself from voting or deciding and fully discloses his interest in a public contract as permitted in West Virginia Code 6B-2-5(d)(1) of the Act is immune from the sanctions of West Virginia Code 61-10-15?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Parks Commission maintains its bank accounts in a local Bank. The Commission has over a period of years borrowed money from this Bank and in some cases secured by deeds of trust on Parks' Commission property. One Commissioner is the Executive Vice President and Manager of a branch of this Bank. Several of the Parks' Commissioners are on the Board of Directors of this Bank, the Bank's Holding Company and own shares of stock issued by the Bank's Holding Company.

The Parks Commission members are part-time public officials appointed by the County Commission. The members have requested an opinion from the Commission on whether they are insulated from the provisions of West Virginia Code 61-10-15 if they recuse themselves from voting or deciding a matter and fully disclose their interest in a public contract between the Parks Commission and the Bank pursuant to subsections 6B-2-3 and 6B-2-5(d)(1) of the West Virginia Governmental Ethics Act.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-3 states in pertinent part that... A person subject to the provisions of this chapter may make application in writing to the Ethics Commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter or the provisions of section fifteen, article ten, chapter sixty-one of this code and would thereby expose the person to sanctions by the Commission or criminal prosecution...A person subject to the provisions of this chapter may rely upon the published guidelines or an advisory opinion of the Commission, and any person acting in good faith reliance on any such guideline or opinion

shall be immune from the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of the code and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon any such opinion or guideline in regard to the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...in addition to the provisions of section fifteen, article ten, chapter sixty-one of this code 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...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 61-10-15 states in pertinent part that...it shall be unlawful for any member of a county...or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service...which as a member...he may have any voice, influence or control...

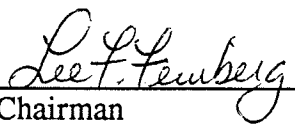
ADVISORY OPINION

Pursuant to subsection 6B-2-3 of the West Virginia Ethics Act any person covered by the Act who in good faith relies upon an Advisory Opinion is immunized from prosecution of a violation of West Virginia Code section 61-10-15 and sanctions set out in the Ethics Act.

Subsection 6B-2-5(d)(1) of the Ethics Act specifically provides that if a part-time appointed public official has an interest in a public contract over which he has direct authority or control that would not prohibit the Parks Commission and the Bank from contracting as long as the official recuses himself from voting or deciding a matter and fully discloses the extent of his interest in the public contract. The Commission has previously ruled that for the recusal to be effective the public official must leave the room.

The amount of interest that each part-time Commission member has in the profits or benefits of the contract or ownership in the business is irrelevant. The key consideration is whether the part-time appointed official follows the three steps set out in subsection 6B-2-5(d)(1) to effectively recuse himself from the decision.

Therefore, a Parks Commission member who relies in good faith upon this advisory opinion is shielded from the sanctions identified in section 61-10-15 as well as the Ethics Act.


Chairman