

ADVISORY OPINION NO. 90-201

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A County Solid Waste Authority Secretary/Treasurer

OPINION SOUGHT

- a. Whether it is a violation of the Ethics Act for a member of a County Solid Waste Authority who is the owner of a Corporation engaged in the sale of motor fuels and lubricants to **contract with a private entity** which is regulated by the County Solid Waste Authority?
- b. Whether it is a violation of the Ethics Act for a public relations firm, on behalf of a County Solid Waste Authority to solicit funds to subsidize educational/media programs concerning recycling and other solid waste issues?

FACTS RELIED UPON BY THE COMMISSION

Public Contract

A member of a County Solid Waste Authority is the president and chief executive officer of a wholesale fuel and lubricant distributor corporation located in that County. The Solid Waste Authority member's corporation is one of five (5) companies engaged in this type of business in the area and one of only two (2) independent wholesalers in the market area. One of the local County landfills (which may be regulated by the Solid Waste Authority) has requested a bid from the member's fuel wholesale Corporation and would like to buy products which the wholesaler regularly sells to members of the public at large.

Solicitation

The Solid Waste Authority has engaged the services of a public relations firm to educate and create a public awareness program for recycling and solid waste issues in the County. The public relations company has solicited donations from private individuals and corporations outside the solid waste industry to help subsidize the program. The educational and informational program will consist of newspaper, radio and television advertisements concerning recycling and other solid waste issues as well as coordinated educational programs in the County public and private school systems. The private entities would be listed as sponsors in the various advertisements or in program brochures. The Solid Waste Authority has the final say on the content and nature of the advertisements as well as the sponsors and would not accept any donations from individuals or corporation either directly or indirectly operating in the solid waste area.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

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

West Virginia Code Section 6B-2-5(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

- (A) Is doing or seeking to do business of any kind with his or her agency;
- (B) Is engaged in activities which are regulated or controlled by his or her agency; or
- (C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family 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...

ADVISORY OPINION

Contract

a. The West Virginia Ethics Act was established to create a code of minimal ethical conduct for public officials and public employees. Subsection 6B-2-5(d)(1) prohibits a public official or a public employee from having more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control.

The contract described by the requestor would exist between the owner of a corporation and a private entity (the County Landfill). The fact that the owner of the Corporation is a member of the Solid Waste Authority is inconsequential in this analysis since the contract would be considered private in nature.

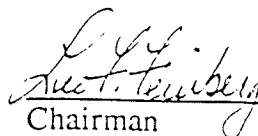
However, the Solid Waste Authority member should be mindful of subsection 6B-2-5(b)(1) of the Ethics Act which prohibits a public official from using his office for private gain. The member may not use his position with Solid Waste Authority to solicit business for his private company from the Landfill or other entities regulated by the Solid Waste Authority.

Further, pursuant to subsection 6B-1-2(c) of the Ethics Act the Solid Waste Authority member, as a public official may not vote or decide any matter which comes before the Solid Waste Authority which is personal to him. The Commission considers a matter to be "personal" when the public official has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote or would give the appearance of impropriety. For example, the member may not participate in a decision making capacity on an issue which pertains to a private entity which conducts business with the member's private Company.

Solicitation

b. Subsection 6B-2-5(c)(1) of the West Virginia Ethics Act provides that public officials and public employees may only solicit gifts for a charitable purpose. The Commission considers solicitation to assist the funding of educational and media programs concerning recycling and other solid waste issues to inure to the overall use and benefit of the general public.

Therefore, it would not be a violation of subsection 6B-2-5(c)(1) of the Ethics Act for the Solid Waste Authority through a Public Relations Firm to solicit funds to subsidize educational and media programs concerning recycling and other solid waste issues, since the solicitation could be considered for a charitable purpose. Clearly no pecuniary benefit would go to the Solid Waste Authority members.


Chairman