

ADVISORY OPINION NO. 89-113

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

Commissioner for a State Park

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a State Park Commissioner to receive a percentage of the gross receipts for a show produced at the State Park in which she has 1/3 interest in the copyright?

Whether it is a violation of the Ethics Act for a State Park Commissioner to sell magazine articles or photographs to the State Department of Natural Resources that publishes a magazine?

OTHER FACTS RELIED UPON BY THE COMMISSION

(Drama Association)

The individual was recently appointed as a member of a State Historical Park Commission. In 1969, the Commissioner began researching and writing a musical drama based on the events which occurred at this Park.

As lyricist for the show, the Commissioner holds 1/3 interest in the copyright. In 1987, a Drama Association, a nonprofit corporation, established a relationship with the copyright holders (of which the Commissioner has a 1/3 interest) to produce the show for a percentage of the gross receipts, minus certain costs. The Drama Association contracted with the Historical Park Commission to produce the show at the Park.

(Magazine)

Prior to her appointment to the Commission, the Commissioner acted as a free lance writer for a magazine published by the Department of Natural Resources. She received (.10) ten cents per word and (\$75) seventy-five dollars per photograph. During the summer before her appointment she prepared another article but has withheld submitting it to the State Magazine, pending a ruling by the Ethics Commission.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(a) states in pertinent part that... the provisions of this section apply to all...appointed public officials...whether full or part time, in state, county, municipal governments and their respective boards...

West Virginia Code 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 with the governmental body over which he or she has direct authority...

West Virginia Code 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... A limited interest for the purposes of this section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser, or an interest as a creditor not exceeding ten percent of the total indebtedness of a business or thirty thousand dollars, whichever is the lesser.

West Virginia Code 6B-2-5(d)(3) states in pertinent part that... where the provisions of subdivision (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

1. An analysis of the pertinent facts and statutory provision of (d)(1) follows:

a. The Commissioner is a public official, since she was appointed to a State Board by the Governor and has direct authority over a State Historical Park.

b. The Commissioner has a contract with a Drama Association, a non-profit organization, to receive a certain percentage of the gate receipts of the musical drama presented at the State Historical Park.

c. However, the Drama Association has a public contract with the State Historical Park and the Commissioner has an interest in the benefits and profits of such public contract.

d. The Commissioner has more than a limited interest in the public contract (that is 33%).

e. Therefore, it would be a violation of subsection (d)(1) of the Act for the Commissioner to receive certain profits or benefits of a public contract with the governmental body (the State Historical Park) over which she has direct authority.

f. However, the affected governmental body may make a written application for exemption if it can show one of the following would result: undue hardship, substantial interference, loss of quorum or excessive cost.

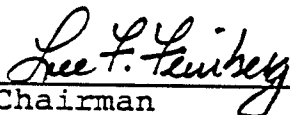
2. An analysis of the pertinent facts and statutory provision of (d)(1) follows:

a. The Commissioner is a public official with direct authority over a State Historical Park.

b. The Commissioner expects to have a public contract with the Department of Natural Resources.

c. However, the Commissioner does not have direct authority over the Department of Natural Resources.

d. Therefore, it is not a violation of subsection (d)(1) for the State Park Commissioner to contract with the Department of Natural Resources.


Chairman