

ADVISORY OPINION NO. 89-89

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

Member of a State Commission

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a State Commission members' business to receive the benefits and profits of a public grant given to an Art Center by the State Commission?

OTHER FACTS RELIED UPON BY THE COMMISSION

A State Commission member is currently serving on Boards of two arts organizations. He is president of the Board of Trustees of an Art Center and he is vice-president of a Symphony Society.

The Member is president and owner of a small, full service advertising agency. Because of the individual's long association with the visual arts, he considers himself and the capabilities of his advertising agency to be a considerable asset to marketing the arts organizations. For years he used these resources and talents to the benefit of these organizations without any financial remuneration.

Recently, the Art Center (of which he is president of the Board of Trustees) embarked on a revitalized marketing program to increase its membership. This program is a multimedia comprehensive action plan far beyond the ability of his company to execute without compensation.

The marketing effort is being made possible due to the implementation of a new grant program which makes it possible for this Art Center to compete with other entities on an equal footing.

The Member's advertising firm was named in the Art Center's application for the grant funding from the State Commission. However, the grant application was submitted prior to his being asked to serve as a member of the State Commission.

During a recent Commission meeting, the grant application for the Art Center was considered. This was the Member's first meeting as a Member of the Commission. At that time he stated the purpose and benefits to the Art Center because of the unique nature of the new grant program. He informed the members of the Arts Commission of his involvement, abstained from voting, and offered to leave the

room during the vote process.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY 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...commissions...

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no ...appointed public official...or business with which...he 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 he has direct authority...

West Virginia Code 6B-1-2(c) states that the legislature finds that the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of action as a public representative charged with deciding or acting on a matter.

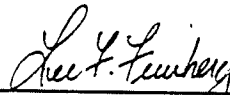
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An analysis of the pertinent facts and statutory provisions follows:

1. The Commission member is a public official within the meaning of subsection 5(a) since he was appointed by the Governor.
2. The Commission member has direct authority over the Commission.
3. The Commission member is associated with and owns a business (the advertising agency) which has an interest in the benefits and profits of a public contract (the Art Center grant) with the Commission.
4. It is assumed that since the Commission member owns the business he has more than a limited interest as set out in subsection (d)(2), that is, more than 10% ownership interest.

5. Therefore, it would be a violation of subsection (d)(1) for a Commission member's business to have an interest in the benefits or profits of a public contract with a governmental body over which he has direct authority (the Commission).

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



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Chairman