

ADVISORY OPINION NO. 89-100

ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

An employee of a State Political Subdivision

OPINION SOUGHT

Whether an employee of a political subdivision may serve on a State Commission when the employee's agency applies for and receives funds based upon the Commission's approval?

OTHER FACTS RELIED UPON BY THE COMMISSION

This individual is an employee of a political subdivision of the State.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

Public Contracts

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

West Virginia Code 6B-2-5(d)(2) states in pertinent part that in the absence of bribery or a purpose to defraud,...a public employee...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 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...

ADVISORY OPINION

An analysis of the facts presented and pertinent statutory provisions of West Virginia Code 6B-2-5(d)(1) and (2) follows:

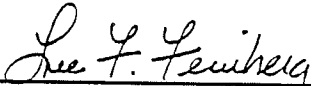
a. The individual is a public employee of a political subdivision and also serves on a State Commission.

b. The agency with which the individual is associated receives public funds based upon approval of the Commission. This constitutes a public contract.

c. However, subsection (d)(2) requires the public employee to have more than a limited interest (10% or \$30,000) in a "business" which is a party to or which receives an interest in the benefits of a public contract.

d. A Governmental Agency is not considered a business which the employee is associated with or has an interest in under the terms of the Act.

Therefore, the public employee is not in violation of subsections 5(d)(1) and (2) of the Act and may be a member of the Commission that approves funding for the employee's agency.



Chairman