

ADVISORY OPINION NO. 89-78

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

President of a County Development Authority and County Commissioner

OPINION SOUGHT

Whether it is a violation of the Act for the president of a County Development Authority and a County Commissioner (who are members of a private investment group) to participate in negotiations with a private short haul regional rail company in an adjacent county and state?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Trust for Public Lands, a non-profit organization, holds a two-part option with CSX for certain property. The option date deadline is December 15, 1989, with notification of the intent to exercise the real estate option by December 1, 1989.

Part 1 of the option: The Trust for Public Lands has agreed to purchase the real estate and sell it back to the United States Forest Service for \$400,000 (approximately \$250,000 of this has been appropriated by Congress). Also, \$75,000 will be procured through land sales of a particular city and the remainder has been provided by the Trust itself. The United States Forest Service will lease the property back to the County Development Authority for a very small yearly sum.

Part 2 of the option: CSX is considering selling for \$300,000 certain improvements including rails, ties, plate, ballast, bridges and three miles of replacement rail. This option is not being exercised by the Trust for Public Lands and is available for purchase by the County Development Authority.

The President of the County Development Authority has obtained a \$300,000 loan for the County Development Authority from the State for this project. The loan would be repayable over six years in conjunction with its receipt of hotel-motel tax revenue at the rate of \$50,000 per year, interest free. The President of the County Development Authority is continuing to negotiate on behalf of the County Development Authority with CSX.

A private investment group composed of several investors including the President of the County Development Authority and the County Commissioner have formed a corporation to attempt to purchase from CSX the short haul operation for sixty miles of railroad track in an adjacent county.

However, a contract has not been prepared, finalized or executed for this purchase. It is anticipated that such agreement may be reached in the near future.

The President of the County Development Authority and County Commissioner now seek an opinion from the Ethics Commission as to the propriety of their negotiating with CSX as members of a private investment group after participating in the contractual arrangement with CSX on behalf of the County Development Authority for the purchase of improvements noted in option 2.

The County Development Authority is not involved in any way with the potential private contract, nor will the County Commission or County government be involved. The only common denominator is that both entities (County Development Authority and private investment group) are contracting with CSX. Furthermore, the object of the two contracts are different; the second option (with the County Development Authority) is to purchase improvements and the private contract (with the private investment group) is to purchase a short haul operation.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states that a public official or public employee may not 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 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 or with which he or she is employed...

ADVISORY OPINION

An analysis of the pertinent facts and statutory provisions follows:

1. The County Development Authority President is an appointed public official. The County Commissioner is an elected public official.

2. The County officials are associated with a business known as the private investment group. However, it is not known at this time whether each public official has a limited interest as defined in subsection (d)(2) (less than 10% or \$30,000).

3. The next prong of the (d)(1) analysis requires the public official or a business that he is associated with to be a party to a public contract or to receive the benefits and profits of a public contract with a governmental body over which he has direct authority.

That is not the case here. Neither the County Development Authority nor the County Commission are contracting with the private investment group.

Therefore, it is not a violation of subsection (d)(1) for the public officials to contract with the private investment group.

Furthermore, the public official should not intentionally use his office or the prestige of his office for his or the private investment group's gain as prohibited by subsection b(1).



Chairman