

ADVISORY OPINION NO. 92-33

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 6, 1992

GOVERNMENTAL BODY SEEKING OPINION

A State Legislator

OPINION SOUGHT

Is it a violation of the Ethics Act for a State Legislator to become a partner or stockholder in a private corporation which may be eligible for loan financing through a public corporation created by statute?

FACTS RELIED UPON BY THE COMMISSION

The Requestor is a member of the West Virginia Legislature. In his private capacity he is considering becoming either a partner or stockholder in a private corporation that will build and then sell or lease housing units in a multi-family townhouse complex. The type of project contemplated by the corporation may be eligible for loan financing through a public corporation which was created by statute to provide financing for various housing projects.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected...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 which such official...may have direct authority to enter into, or over which he or she may have control...Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body...when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

ADVISORY OPINION

In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which per se prohibits the requestor from serving as a partner or shareholder in a private corporation which may build and then sell or lease housing units with the financial assistance of a public corporation.

Private Gain

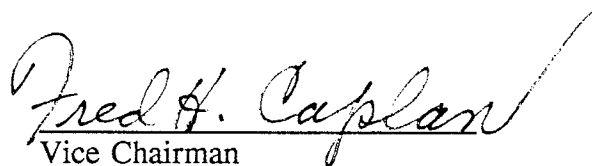
Pursuant to WV Code §6B-2-5(b)(1), a public official may not use his office or its resulting prestige for his own private gain or the private gain of another. Therefore, the Requestor should not use his status as a member of the Legislature to obtain, increase, influence or promote business for his private company or to obtain favorable treatment for any financing application his private corporation may seek with a public corporation.

Public Contracts

Pursuant to WV Code §6B-2-5(d)(1) no public official or business with which he is associated may have more than a limited interest in the profits or benefits of a public contract over which the public official has direct authority or control. In this case, however, any decision to enter into a public contract would be made by the public corporation which might approve financing for the construction project.

Since the Requestor is not an employee or official for the public corporation, he would have no authority or control over its decision to enter into the contract. Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for the Requestor to be a partner or shareholder in a private company that receives financing from a public corporation.

The Commission notes that even if the Requestor did have authority or control over a contract in which he had a pecuniary interest, WV Code §6B-2-5(d)(1) contains an exemption which specifically provides that a member of the Legislature may have an interest in any public contract. The Legislator must disclose his interest in the contract, recuse himself from the evaluation process and take no part in the awarding or letting of such contract.


Vice Chairman