

ADVISORY OPINION NO. 97-33

Issued on December 4, 1997 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

County Development Authority Member

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 if a County Economic Development Authority conveys title to property conveyed to it by a City with the intent to correct an error?

FACTS RELIED UPON BY THE COMMISSION

Several years ago various individuals donated land to the City so that a road could be built. In the normal course of events the deeds to the City would have conveyed the property on which the actual road was to be built and granted easements on adjoining property to facilitate construction of the road.

A recent title examination disclosed that the deeds to the City mistakenly conveyed in fee the property which was to have been merely subjected to easements. As a result the City owns a strip of property located between the roadway and adjacent private property. The strip varies in width from a few feet to approximately twenty feet.

The City wants to correct this mistake by restoring the property to the adjacent property owners to whom it would have belonged, but for the mistake in conveyancing. The City believes the most direct and efficient method to achieve this goal is to convey the property to the County Economic Development Authority which would then convey appropriate portions of it to each of several adjacent property owners.

A member of the Development Authority, who has a financial interest in two of the easement parcels which would be conveyed, would recuse himself and abstain from voting on any matter that comes before the Development Authority regarding the easements.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and 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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family 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 or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to... prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control 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.

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...district school officer...supervisor or superintendent, principal or teacher of public schools, or any member of any other county or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

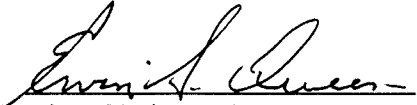
ADVISORY OPINION

Both the Ethics Act and WV Code 61-10-15 contain provisions which restrict public servants from having financial interests in public contracts which their public positions give them authority to award or control.

In this case the transfer of the City's interest in the easements is intended to correct a mistake that was made when the land for the road was donated to the City. At that time it was not intended that the City would retain a fee interest in the easements.

The Commission finds that such a transfer is not a "contract" as that term is used in either the Ethics Act or WV Code 61-10-15. This determination is based on the stated intent of the transfers and the fact that they will be without consideration, i.e. for free. Therefore the requester would not be in violation of WV Code 61-10-15 or WV Code 6B-2-5(d) if the Authority serves as a conduit for the City's transfer of its interest in property it has acquired by mistake.

The Commission further finds that the actions of the Authority's members in serving as a conduit to carry out transfers initiated by the City would not constitute prohibited use of office for private gain. However, members of the Authority who have any financial interest in the transfers should take no part in the deliberation or vote regarding this matter.


Vice-Chairman