

ADVISORY OPINION NO. 99-34

Issued On November 4, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commissioner** asks if he may accept employment with a Community Service Organization to which the County Commission provides financial support.

FACTS RELIED UPON BY THE COMMISSION

The County Commissioner has been offered a job with a county Community Services Organization, a nonprofit corporation serving the elderly and funded by State and federal grants. The Commissioner wants to accept the position and continue to serve on the County Commission. The County Commission provides annual financial support of approximately \$15,000 to the Organization by paying the Organization's utilities bills.

WV CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(d) provides 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 ..."

WV Code 61-10-15 provides in pertinent part that ..." It shall be unlawful for any member... of any ... county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such member he may have any voice, influence or control ..."

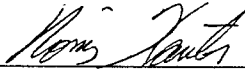
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The Ethics Act prohibits public servants from being a party to, or having a financial interest in, a public contract, purchase or sale which their public position gives them the authority to award or control. WV Code 61-10-15, which applies only to certain county personnel, contains a similar prohibition, which extends to contracts, purchases or sale over which the public servant has "voice, influence or control."

County Commissioners do control Commission contracts, purchases and sales, and they may not be a party to or have a direct or indirect financial interest in them. Nor may their spouses, those they support, or businesses in which they have an ownership interest or by which they are employed. It would, for example, be a violation for a private business which employed the Commissioner to sell supplies or services to County agencies.

However, the Ethics Commission finds that a County Commission's financial support of a nonprofit organization dedicated to activities advancing general public welfare is not the type of transaction governed by WV Code 61-10-15 or the Ethics Act's prohibition against private interests in public contracts. Therefore it would not be a violation of WV Code 61-10-15, or of the Ethics Act, for the Commissioner to continue to serve on the County Commission while employed by the Community Services Organization.

The Commission notes that the requester's interest as an employee of the Community Service Organization would require him to be recused from deliberation or vote as a County Commissioner on matters affecting that Commission's budgetary allocation to the Community Service Organization.


Chairman