

ADVISORY OPINION NO. 99-35

Issued On November 4, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Development Authority** asks whether a former member of its Board, who owns a company with an outstanding loan from the Authority, may be reinstated to the Board?

FACTS RELIED UPON BY THE COMMISSION

The Development Authority used the proceeds of a federal grant to make a loan to a local business owned by a member of the Authority's Board. The member, who resigned from the Authority's Board before the loan was made, was required to personally guarantee the loan. The former Board member now seeks to be reinstated to the Board.

WV CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 61-10-15 states in 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 ..."

ADVISORY OPINION

WV Code 61-10-15 prohibits certain county personnel, including board members of a county Development Authority, from having a personal financial interest, directly or indirectly, in a public contract, purchase or sale, over which their public position gives them control.

Although the loan has already been made, the former member and his company continue to have a financial interest in the loan and a contractual obligation to the Authority. Should the company default on the loan, the Authority's Board would have to take action. The ongoing nature of the relationship renders the former member ineligible for reappointment.

Accordingly, the Commission finds that it would be a violation of WV Code 61-10-15 for the Authority's Board to reinstate the former member as long as the loan is outstanding.


Chairman