

ADVISORY OPINION NO. 2000-07

Issued On June 1, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Commission** asks if members of the committees which govern its local agencies may enter into personal contracts to perform services for the committee on which they serve.

FACTS RELIED UPON BY THE COMMISSION

The State Commission was established by the Legislature to "enable and authorize this state to fulfill its obligations under the federal statute." The State Commission is responsible for the creating of subordinate planning districts at the local level and may designate an existing political subdivision or a geographic area comprised of multiple political subdivisions as planning districts.

The local planning districts are operated by planning committees members who are appointed by and report to the State Commission. The authority of the local planning districts is confined to implementing the federal statutes at the local level and their financial support comes from federal grant proceeds awarded by the State Commission; they receive no county tax revenues.

The planning districts are responsible for collecting information, preparing studies and developing plans to deal with emergency situations arising in their respective geographic areas. Five of the districts are composed of two counties; the other districts are single county entities.

Some of the districts have experienced some difficulty in finding qualified local people to do this work, and have had to contract with those from another part of the State, because many of those with the necessary qualifications are serving as members of the district committees. The Commission asks if the local district committees are permitted to hire their own committee members to do this work.

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 ...

WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or 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 ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control ... *Provided, however*, That nothing herein shall ... 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.

WV Code 6B-2-5(b) *Use of public office for private gain*, provides in 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.

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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, a criminal misdemeanor statute, contains a similar prohibition against certain county personnel having a direct or indirect financial interest in county contracts, purchases or sales over which their public position gives them voice, influence or control. This prohibition applies to the members of county or district boards and county or district officers.

WV Code 61-10-15

All the planning districts, whether single or multi county, are created by and answerable to the State Commission which appoints the members of their governing committees. The mission of a planning district is to carry out the mandate of a federal law and its activities are financed by federal funds. They neither receive nor disburse county tax dollars.

The Ethics Commission finds that the local planning districts are not “county or district boards” and its members are not “county or district officers” as those terms are used by WV Code 61-10-15. It would not be a violation of WV Code 61-10-15 for a planning committee to award a contract to one of its own committee members.

The Ethics Act

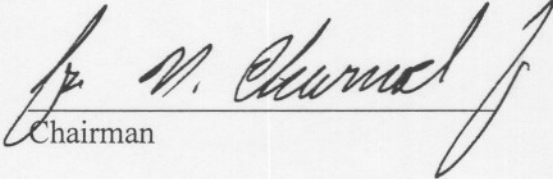
The Ethics Act prohibits public servants from being a party to or having an interest in a contract they have the authority to award or control. WV Code 6B-2-5(d). This prohibition applies to State, county and municipal personnel. However, the Legislature exempted part-time appointed officials from the prohibition, if they have disclosed their interest in a contract and been recused from considering and voting on the transaction.

The members of these local planning district committees have authority over the contracts awarded by their planning districts and would be prohibited from having a personal financial interest in them, had the Legislature not exempted part-time appointed officials. However, it would not be a violation

for a local planning committee to contract for services from one of its own members, if that member had been isolated from official action on the contract - if the member had made the interest known and been recused from evaluating or voting on it.

There is another provision of the Ethics Act which bears on this question. WV Code 6B-2-5(b) prohibits public servants from using the influence of their position for their own private financial gain or the private financial gain of another. Special care must be exercised in proceedings which result in contracts between a planning district and one of its members, so as to prevent any suggestion of favoritism between the members of the governing body. It would be a violation of this provision for planning committee members to give a fellow committee member preferential treatment or unwarranted consideration in awarding contracts.

Finally, the Ethics Commission notes that nothing in the Ethics Act prevents an agency from establishing more demanding ethical standards than the minimum ethical standards of the Ethics Act. While an agency may not lessen the standards of the Ethics Act, it may add rules and regulations it deems necessary to accommodate potential problems or situations unique to the agency and to preserve the appearance of propriety in the conduct of agency business.


Chairman