

**ADVISORY OPINION NO. 2000-31**

**Issued On November 2, 2000 By The**

**WEST VIRGINIA ETHICS COMMISSION**

COPY

**OPINION SOUGHT**

A **County Prosecuting Attorney** asks whether it is a violation for him to be paid for legal work done as a private attorney on behalf of the County Commission.

**FACTS RELIED UPON BY THE COMMISSION**

The County Commission obtained a grant under the HUD Disaster Recovery Initiative Grant Program to purchase several county home sites located in flood plain areas and restrict them from use as home sites in the future. The County Commission has contracted with a regional planning and development agency, Regional Council, to administer the grant

The Prosecutor is statutory attorney for the County Commission, but his position is part-time and the legal services involved in securing the properties are outside the scope of his statutory duties. He can't do the work in his capacity as Prosecutor. The Regional Council has proposed that the Prosecutor, who has maintained a private law practice concentrating primarily in real estate work, be employed in his private capacity to perform the necessary legal work.

The County Commission has, at the Council's request, approved his employment subject to approval by the Ethics Commission. The Council has also sought and obtained the County Commission's approval of the selection of an appraiser for the project. The Commission has designated one of its members to attend participant meetings concerning the project.

**CODE PROVISIONS RELIED UPON BY COMMISSION**

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 ...

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

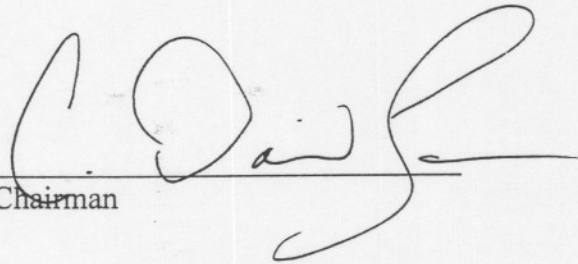
**ADVISORY OPINION**

Both the Ethics Act and WV Code 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract, purchase or sale over which their public position gives them control.

The Ethics Act's prohibition against private interests in public contracts, WV Code 6B-2-5(d), applies to those contracts a public servant has the direct authority to award or over which their public position gives them control. The Prosecutor's public position gives him neither the authority to award the project's legal services contract nor control over it.

However, WV Code 61-10-15 applies a stricter standard and extends its prohibition to those contracts over which certain public servants, including county prosecutors, "may have voice, influence or control." The Commission has ruled previously, in A.O. 99-07, that a Prosecutor's statutory responsibilities as counsel for the County Commission vest in him the required degree of "voice, influence or control" over County Commission contracts.

Although the Regional Council will administer the grant project, it is clear that the Commission continues to exercise oversight of the Council's work and has a degree of control over the award of the legal services contract the project requires. Similarly, the Prosecutor's statutory position as County Commission attorney gives him "voice" and "influence" over that contract. Therefore, it would be a violation of WV Code 61-10-15 for the County Prosecutor to be employed in his private capacity to do the project's legal work.

  
Chairman