

COPY

ADVISORY OPINION NO. 2001-17

Issued On May 3, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commissioner** asks if she and her spouse may rent to tenants whose rent is subsidized by a federal housing program administered by the County Housing Authority.

FACTS RELIED UPON BY THE COMMISSION

The County Housing Authority administers several housing related programs, including one which subsidizes the rent for low income families. Qualifying families select their place of residence and the Authority enters into a lease with the property owner and pays a rent subsidy directly to the property owner from funds provided by the federal housing program.

The Authority's activities are controlled by a Board comprised of members appointed by the County Commission. The Commission is not involved in the day to day operation of the Authority and its activities are financed entirely by federal funds.

The Commissioner's husband owns rental property, some of which is rented to subsidized tenants pursuant to one year leases entered into prior to her election to the Commission. She asks if her husband may continue leasing to tenants who are subsidized by the Authority now that she serves as a County Commissioner?

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 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(b) 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.

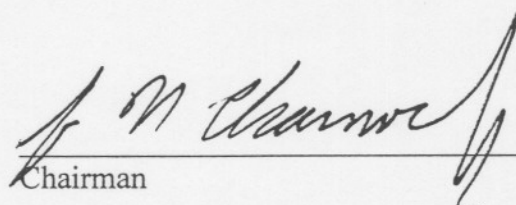
ADVISORY OPINION

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 prohibitions also extend to contracts involving public servants' spouses and the businesses in which they or their spouses have an ownership interest of more than 10 per cent.

The Ethics Act's prohibition applies only to those contracts which the public servant has the authority to award or control. The prohibition of WV Code 61-10-15 extends further to those public contracts over which the public servant may have "voice, influence or control".

Clearly County Commissioners cannot award Housing Authority contracts and have little, if any, legal control over them. However, they do have the authority to create housing authorities and to appoint and remove the members of their boards. This, coupled with their general duty to oversee the fiscal responsibility of subordinate county agencies, gives County Commissioners "voice" and "influence" over the operation of the County's Housing Authority and its contracts. The WV Supreme Court reached the same conclusion in *State v. Neary*, 365 S.E.2d 395 (1987)

Therefore, the Ethics Commission finds that it would be a violation of WV Code 61-10-15 for the County Commissioner's spouse to lease to tenants who are receiving rent subsidies from the County's Housing Authority. The existing one year leases do not pose a problem, as they were entered into prior to the Commissioner's election to office, but they may not be renewed.


Chairman