

ADVISORY OPINION NO. 2007-11

Issued On October 4, 2007 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Municipal Utilities Commission** asks if, as part of a project to extend water service, it may contract with a company owned by one its members to locate a water tank on his property.

FACTS RELIED UPON BY THE COMMISSION

A Municipal Utilities Commission is in the process of extending its water lines to serve additional properties. Part of this project involves locating a new water tank and a right-of-way to the tank. One of the potential sites for installing the tank is on property that belongs to a company that is owned by one of the Commission Members. Once the Member's property was identified as one of the potential sites for locating the tank, the Member thereafter refrained from participating in any discussion or vote regarding this issue.

The Commission, without the affected Member present, subsequently decided to locate the tank on the Member's property, consistent with the engineering report. Before obtaining an appraisal, with a view toward acquiring the appropriate interest in this property, the Commission seeks a determination whether the Member's property can be acquired without violating the Ethics Act.

Members of this Commission are appointed by the municipality and serve on a part-time basis.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(d)(1) *Interests in public contracts*, provides in pertinent part:

In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, 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: *Provided, however*, That nothing herein shall be construed to 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.

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W. Va. Code § 6B-2-5(d)(1) prohibits a public official from having more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. An appointed Member of a Municipal Utilities Commission would ordinarily have authority and control over all contracts entered into by the Commission, including the lease or purchase of his personal property for use by the Commission.

However, W. Va. Code § 6B-2-5(d)(1) includes a proviso which excludes part-time appointed public officials from the prohibition against having a limited interest in the profits or benefits of a public contract over which they have authority or control, provided the official is recused from discussing or voting on such contract and has fully disclosed the extent of such interest in the contract.

Therefore, it would not be a violation of W. Va. Code § 6B-2-5(d)(1) for the Municipal Utilities Commission to acquire an interest in real property from a business owned by one of its Members, so long as the Commission Member recuses himself from the decision to complete the acquisition.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et. seq.*, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, Chairman