

Advisory Opinion 2024-05

Issued on July 11, 2024, by

The West Virginia Ethics Commission

Opinion Sought

A **County Commission** asks whether it may buy or sell property to or from a business owned by the sons of a County Commissioner's business partner.

Facts Relied Upon by the Commission

The Requester, a County Commission, needs more office space because the Courthouse and Courthouse annex have inadequate office space to fulfill the County Commission's existing needs. The County Commission plans on purchasing a building across the street from the Courthouse for additional office space from a business owned by the two adult sons of a person who co-owns a business with a County Commissioner.

The County Commission also plans on acquiring property situated behind the Courthouse annex, from the same business, to use for Courthouse parking. The County Commission has been leasing this space for parking and believes it is in the best interest of the County to acquire the property instead. The County plans to acquire the property behind the annex through a property exchange agreement for another property that the County owns in city limits. The County asserts that the property it is exchanging is not being used by the County, and the County believes it is in the best interest of the County to relinquish that property in exchange for the property behind the annex.

The County Commissioner and his business partner own a business engaged in buying and selling residential real estate, but their business has no ownership interest in the subject properties. Further, neither the County Commissioner nor his business partner has an ownership interest in the sons' business. Since a County Commissioner co-owns a business with the parent of the two adult sons who own the business with which the County will be entering into a contract to obtain the two properties, the County Commission is seeking guidance on whether the transactions comply with the Ethics Act and W. Va. Code § 61-10-15. The Requester states that the County Commissioner, who co-owns another business with the father of the adult property owners, has not voted on matters relating to the property transactions in question.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b)(1) states, in relevant part:

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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection.

W. Va. Code § 6B-2-5(d)(1) states, in pertinent part:

In addition to the provisions of § 61-10-15 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 the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body

W. Va. Code R. § 158-8-4 (2009) states:

4.1. The prohibition of W. Va. Code § 6B-2-5(d) against being a party to or having an interest in the profits or benefits of a contract applies only to public contracts involving a governmental body or agency.

4.2. Public officials or public employees or members of their immediate family are considered to be “associated” with a business if they or their immediate family member are a director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

W. Va. Code § 61-10-15(a) states, in relevant part:

It is unlawful for any member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control

Advisory Opinion

Ethics Act

The Ethics Act prohibits a public servant or business with which he or she is associated from having more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control. W. Va. Code § 6B-2-5(d)(1). The Ethics Act states that a person is associated with a business if “the person [public official or public employee] or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class” W. Va. Code R. § 158-8-4 (2009)

The County Commission seeks to purchase property from or exchange property with a business owned by two adult sons of a person who owns another business with a County Commissioner. The County Commissioner and his business partner have no ownership interest in the sons’ business or in the subject properties. The County Commissioner is not associated with his business partner’s sons’ businesses for purposes of the public contract restrictions in the Act and related legislative rule. **The Ethics Commission holds, therefore, that the Ethics Act does not prohibit a county commission from buying or selling property to or from a business that is owned by the two adult sons of a person who co-owns a business with a county commissioner.**

W. Va. Code § 61-10-15

A county commissioner must also comply with W. Va. Code § 61-10-15, a criminal code provision that prohibits county officials, including county commissioners, from having an interest in contracts over which they exercise “voice, influence, or control.”

The Ethics Commission held in [Advisory Opinion 2013-13](#) that W. Va. Code § 61-10-15 prohibits a county commission from leasing its marina to a county commissioner’s business partner, even when the marina lease is unrelated to the partnership. In this case, however, it is not the County Commissioner’s business partner with whom the County is contracting to acquire property. The County Commission is, instead, purchasing property from a business owned by the adult sons of the County Commissioner’s business partner. In [Advisory Opinion 1996-17](#), the Ethics Commission held that a county commissioner’s law partner may contract with a public service district if the law partner contracted directly with the public service district outside of the law practice and his law partner received no direct or indirect financial interest from the contract. The Commission notes that the relationship here between the business acquiring property from or selling property to the County Commissioner is even more attenuated than the situation in Advisory Opinion 1996-17. The County Commissioner does not have an ownership interest in the subject properties or the business owned by his business partner’s sons. The Commission finds that a county commissioner’s co-ownership of a business with a parent of the adult owners of a business does not

give him a direct or indirect financial interest in the property transactions between that business and the County.

The Ethics Commission holds, therefore, that W. Va. Code § 61-10-15 does not prohibit a county commission from buying or selling property to or from a business that is owned by the two adult sons of a person who co-owns a business with a county commissioner.

This Advisory Opinion is based on the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice, as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11, and W. Va. Code § 61-10-15, 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.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission