ADVISORY OPINION NO. 2014-02

Issued on February 6, 2014 by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Board** asks whether its members who have relationships with particular municipalities must recuse themselves from reviewing, evaluating, or voting on applications submitted by these municipalities.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a State Board with the power and authority to review, evaluate and approve or reject written applications submitted by municipalities to participate in a State pilot program. Participation in the pilot program may result in financial gains to a municipality. One State Board member is an elected official from a municipality; two State Board members are employees of a municipality; and, one State Board member performs legal work for a municipality.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

> (1) 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.... The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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

> ... [N]o 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. (Emphasis added.)

W. Va. Code§ 6B-2-5U) reads, in relevant part:

> (1) Public officials... may not vote on a matter:
> (A) In which they, an immediate family member, or a **business** with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person 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. (Emphasis added.)

W. Va. Code§ 6B-1-3(b) reads, in relevant part:

> "Business" means any entity through which business for-profit is conducted including a corporation, partnership, proprietorship, franchise, association, organization or self-employed individual.

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The basic concept of the Ethics Act is that public servants may not use their public positions for their own private gain or the private gain of others. The Act's Legislative findings explain that the Act is intended to prevent public servants from using their public positions"... for personal gain beyond the lawful emoluments of their position ... [or] ... to benefit narrow economic or political interests at the expense of the public at large.... "

W. Va. Code§ 6B-2-5(d)(1) prohibits public servants or any business with which they are associated from having a financial interest in a contract over which they have authority and control. Likewise, W. Va. Code§ 6B-2-5U)(1)(A) prohibits public servants from voting on a matter in which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest.

For purposes of the Ethics Act, W. Va. Code§ 6B-1-3(b) defines business as "any entity through which business for-profit is conducted ...." The definition does not include a governing body. Advisory Opinion 2013-47. Therefore, the public servants described herein do not have financial interests in the applications of municipalities. In conclusion, the Ethics Act does not prohibit the State Board members from serving on the State Board or from voting on the applications submitted by municipalities with which they have a relationship.

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 other public agencies unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman