

ADVISORY OPINION NO. 2004-27

Issued On January 6, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Public Service District (PSD) asks if it is permissible to refinance a loan with a bank whose president currently serves as a Board Member.

FACTS RELIED UPON BY THE COMMISSION

The PSD is in the process of renegotiating a \$69,000.00 loan. The District sought and obtained proposals from various financial institutions. The most attractive interest rate and loan term was submitted by a local bank. The bank's President is currently serving as an appointed member of the PSD's three-member Board.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. 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 . . . *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.

W. Va. 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. . . .

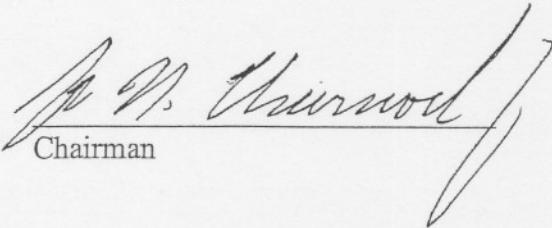
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Both the Ethics Act and W. Va. Code § 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract, purchase or sale over which their public position gives them control. The Ethics Act permits a part-time appointed official, such as a PSD Board Member, to be recused from participating in the contractual process, and comply with the limitations in the Act.

W. Va. Code § 61-10-15 applies a stricter standard of conduct. It prohibits certain county officials, including PSD Board Members, from having a direct or indirect pecuniary interest in a public contract over which their public position gives them voice, influence or control. This prohibition applies to all contracts, purchases and sales between the public servant's agency and any business in which the public servant has a pecuniary interest as an owner, shareholder, director or officer.

In Advisory Opinion 98-26 the Commission found that the Legislature had carved out an exemption from this prohibition for members of a County Economic Development Authority. However, no similar exemption is contained in the statutes governing PSDs.

Accordingly, the Commission finds that it would be a violation of W. Va. Code § 61-10-15 for the PSD to renegotiate a loan with a bank whose President serves as a PSD Board Member.

  
Chairman