

ADVISORY OPINION NO. 2004-13

Issued On August 5, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Commission asks whether it is a violation for it to purchase a building from the County Prosecutor.

FACTS RELIED UPON BY THE COMMISSION

The County Commission seeks to expand its office space. It no longer has any available space in the courthouse or the annex to the courthouse.

A building owned by the County Prosecutor is located next to the courthouse. There is no other building next to the courthouse or within close proximity to the courthouse which meets the space requirements of the County Commission.

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 ...

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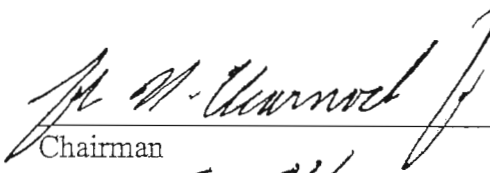
Both the Ethics Act and WV Code 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract, purchase or sale over which their public position gives them control. The Commission has previously concluded that a County Prosecuting Attorney does not have direct authority to award or control the County Commission's contracts, and it would not be a violation of the Ethics Act for the Prosecutor to sell real property to the County Commission, provided he does not participate in the purchasing decision as the county's attorney, and is recused from any official action in regard to the property.

The public contract prohibition in WV Code 61-10-15 is more comprehensive, prohibiting covered persons, such as a County Prosecutor, from having a personal financial interest, directly or indirectly, in public contracts, purchases and sales over which their public position gives them "voice, influence or control."

In most situations, it would be a violation for a County Prosecutor to contract with the County Commission. However, if the County Commission elects to expand its facilities on adjacent property, the County Prosecutor is the only real estate owner whose property and building meets their requirements.

The WV Supreme Court of Appeals dealt with a similar situation in *Dials v. Blair*, 111 S.E.2d 17 (1959), where a county school system purchased water from a company in which a board member had an ownership interest. The Court ruled that it was not a violation of WV Code 61-10-15 for a county board of education to purchase water from the company where water service could not be obtained from any source other than water companies in which a member of the board had an ownership interest.

Given this particular factual situation, the Commission rules that it would not be a violation of WV Code 61-10-15 for the County Commission to purchase a building from the County Prosecutor. The Commission notes that this decision is limited to the facts and circumstances of this particular case, and the decision may not be relied upon by others without having first consulted with and received written confirmation from the Ethics Commission.


Chairman
8-5-04