

ADVISORY OPINION NO. 2003-08

Issued On July 10, 2003 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commission** asks whether it may purchase property which is partly owned by a financial institution on whose board a County Commission member serves.

FACTS RELIED UPON BY THE COMMISSION

The County is seriously deficient in office space and is looking for property for expansion. The only property of sufficient size for the planned expansion, located within close proximity to the County's current buildings, is owned by several parties, including a financial institution for which one of the County Commissioners serves as a paid board of directors member.

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 in 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 a county commission ... 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 ...

ADVISORY OPINION

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.

Each applies a different rule for the nature and extent of association a public servant may have with a private company before the company is disqualified from doing business with the public servant's public agency.

The Ethics Act's rule does not bar the County Commission from dealing with the financial institution simply because the Commissioner is compensated for serving on its board of directors. If the Commissioner or his spouse had an ownership interest of more than ten per cent in the institution, such dealings would be barred.

Under the rule applied by WV Code 61-10-15, the Commissioner's service on the institution's board of directors is sufficient to bar the Commission from dealing with the financial institution - absent extraordinary circumstances.

However, in this case the Ethics Commission finds that the unique nature of the property sought, in terms of its proximity to the County's other office buildings and size sufficient to accommodate the County's building needs, constitute sufficiently extraordinary circumstances to excuse the application of the prohibition.

Therefore it would not be a violation of WV Code 61-10-15 for the County Commission to purchase the property under consideration, simply because a County Commissioner serves on the board of directors of one of the property's owners. The Commissioner should, of course, be recused from the discussion and vote on the County's acquisition of the property.



Chairman