

ADVISORY OPINION NO. 97-32

Issued on November 6, 1997 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Member of a County Solid Waste Authority

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 if a County Solid Waste Authority enters into a contract with an attorney with whom an Authority member has a business relationship?

FACTS RELIED UPON BY THE COMMISSION

The requester is a member of a County Solid Waste Authority (SWA). That Authority, and several others, are considering hiring an attorney to represent their interests in pending litigation. The other Authorities will pass resolutions committing them to retaining an attorney and the requester as an assistant to the attorney. However, the requester is aware that WV Code 61-10-15 would prohibit him from having any financial interest in a contract with his SWA.

That SWA will pass a resolution retaining only the attorney and agreeing to share in a proportional share of only that attorney's fees and costs. It will have no responsibility to pay any of the requester's fees or costs.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...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 such 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...

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...or any member of any other county or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

The Ethics Act

The Ethics Act prohibits public servants from being a party to or having a financial interest in any contract over which they have authority or control by virtue of their public position.

In this case the requester, as a member of his County's SWA, will have authority and control over that SWA's decision to contract for a share of the legal costs associated with pending litigation. However, the Commission finds that since the requester's SWA will only be committed to paying a share of the attorney's costs and fees, the requester would not have a financial interest in that contract.

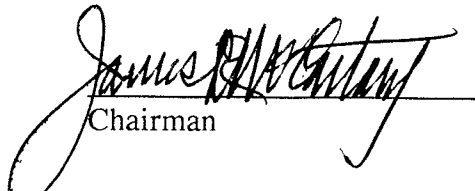
Therefore, the requester would not violate the Ethics Act if his SWA voted to participate in hiring an attorney to represent it and other SWAs.

West Virginia Code 61-10-15

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract.

In this case, the requester's position as a member of his County's SWA would give him voice, influence and control over that Authority's contracts. However, as noted above, he has no financial interest in his Authority's decision to hire an attorney. Therefore, he would not be in violation of WV Code 61-10-15 if his Authority adopts the proposed resolution committing it to pay a proportional share of the attorney's costs and fees.

Other SWAs that may be interested in joining the suit and hiring the attorney will also pass resolutions committing them to pay a proportional share of the attorney's costs and fees as well as the requester's costs and fees. The requester would have a clear financial interest in those contracts. However, the requester is not a member of those SWAs and thus has no voice, influence or control over their decisions to enter into such contracts. Therefore he would not be a violation of WV Code 61-10-15 if those other SWAs voted to contract with him to provide assistance to the attorney.


Chairman