

ADVISORY OPINION NO. 94-35

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 5, 1995

GOVERNMENTAL BODY SEEKING OPINION

Members of a County Redevelopment Authority

OPINION SOUGHT

Do either the Ethics Act or WV Code § 61-10-15 prevent or disqualify persons from serving as part-time members on the Authority's Board of Directors because they serve in other public positions or have private financial interests in companies which do business in the county?

FACTS RELIED UPON BY THE COMMISSION

The County Redevelopment Authority is governed by a Board of Directors. The Board Members, who serve part-time, have private financial interests in various community businesses, including a bank. The Board Members want to make sure that the companies with which they have a financial association [as employees, officers, directors, or shareholders] are permitted to do business with persons and companies that contract with the Authority or are involved in the Authority's projects.

Two of the Board Members also hold positions with other public entities and are concerned to establish that this does not disqualify them from serving on the Authority or expose them to possible violations of the WV Ethics Act or WV Code §61-10-15. One is the head of a County Housing Authority. The other is a Director of a County Area Development Corporation.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...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.

West Virginia Code §6B-2-5(e) stated in pertinent part that...no present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

West Virginia Code §61-10-15 states in pertinent 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 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...The provisions of this section shall not apply to publications in newspapers required to be made by law.

ADVISORY OPINION

The Ethics Commission's authority and responsibility for advising public servants is limited, with only one exception, to the provisions of the Ethics Act. The one exception is WV Code § 61-10-15, a statute which applies to certain county officials and employees. WV Code § 61-10-15 applies the Authority's Board Members and figures prominently in the issues raised by their request for an advisory opinion.

On the question of disqualification, the Commission finds that neither the Ethics Act nor WV Code §61-10-15 prevent or disqualify any of the Board Members from serving because of their private business interests, occupations or other public positions they hold.

Contracts with the Authority. It is important to recognize, however, that both the Ethics Act and WV Code § 61-10-15 prohibit public servants from having a private financial interest in any contract, purchase or sale of their agency over which their position gives them authority or control. Both prohibitions are a recognition that some situations have historically proven to create problems or at least the appearance of impropriety. Outright prohibitions such as these are established in sensitive situations in order to keep public servants out of harm's way.

Therefore, subject to certain exceptions not relevant here, neither the Authority's Board Members, nor the businesses with which they are associated may contract with, sell to, or buy from **the Authority** - even if a Board Member were recused from considering or voting on the matter which affected him or her.

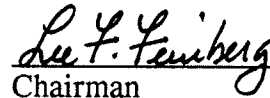
Contracts with Authority clients. Neither the Ethics Act nor WV Code §61-10-15 would prevent private companies with which the Board Members are associated as employees, officers, directors, or shareholders from doing business with persons or companies that contract with the Authority or are otherwise involved with its projects. There would be no violation if such business were transacted.

The Commission relies upon the representation of the requester that no Authority Member or any of the employees, officers or directors, will require any third party entity to deal with any Board Member or a business with which the Board Member is associated as an employee, officer, director or shareholder. Any such relationship would be voluntary on the part of the third party entity.

Contracts between the Authority and other public entities. Neither the Ethics Act nor WV Code §61-10-15 would prevent the Authority from transacting business with other public agencies with which the Board Members may be associated as members, directors or employees. No provision of the Ethics Act would prevent such transactions and the Commission finds nothing in WV Code §61-10-15 or the decisions of the WV Supreme Court of Appeals to suggest that WV Code §61-10-15 is intended to apply to public contracts between a county agency and another public entity.

Therefore, it would not be a violation of WV Code §61-10-15 if the County Area Development Corporation, of which one Board Member is a Director, were to contract with the Authority. Nor would it be a violation for the Authority to contract with the County Housing Authority, by which another Board Member is employed.

Finally the Commission notes that it would be improper for the Board Members to use the influence of their positions with the Authority or any nonpublic information gained from working with the Authority to give themselves or businesses with which they are associated an unfair advantage in securing business with persons who contract with the Authority or are otherwise involved with its projects. Such conduct would be a violation of the Ethics Act's prohibitions against the use of office for private gain and its prohibition against the misuse of confidential information.


Chairman