

ADVISORY OPINION NO. 95-19

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 4, 1995

GOVERNMENTAL BODY SEEKING OPINION

A Senior Executive Assistant

OPINION SOUGHT

Is it a violation of the Ethics Act for a public servant to share in the profits of a joint venture involving the repurchase of land from a State Agency?

FACTS RELIED UPON BY THE COMMISSION

The requester is a Senior Executive Assistant. He was approached by a friend of 25 years to enter into a joint venture to repurchase and then re-sell or develop property formerly owned by this individual. The land in question was taken from the requester's friend by a State Agency invoking the power of eminent domain. Since the property is no longer needed for agency purposes, it is subject to reacquisition by the original land owner under a statutory right of first refusal.

The requester has entered into a partnership agreement with his friend pursuant to which the parties will evenly divide any profit obtained from the eventual re-sale or development of the property after it is repurchased from the State. Under the agreement the requester will provide the funds to repurchase the property.

The agreement also requires the requester to obtain this advisory opinion. In the event the agreement to split profits is found to be violative of the Ethics Act, the requester will be entitled to repayment of the repurchase money at statutory interest.

The friend is currently negotiating with the State Agency over a repurchase agreement but the requester is not taking any part in those negotiations. The requester did arrange a meeting between his friend and the head of the Agency responsible for selling the property. However, this was done prior to the requester's entering into the partnership agreement and the requester did not communicate any personal financial interest in the reacquisition of the property.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code Section 6B-2-5(e) states 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.

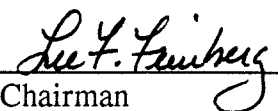
ADVISORY OPINION

West Virginia Code §6B-2-5(b)(1) prohibits a public servant from using his position or its resulting prestige for his own private gain or the private gain of another. A related provision, WV Code §6B-2-5(e), prohibits a public servant from using confidential information acquired in the course of performing his official duties to further his own or another's private interests.

Nothing in the facts presented to the Commission by the requester indicate that he has used either his public position or confidential information for personal private gain or for the private gain of another.

Therefore, based upon the facts provided, it would not be a violation of the Ethics Act for the requester to share in the profits associated with any resale or redevelopment of property that is repurchased from the State by his friend.

The requester is cautioned that he should take no future part in establishing the Agency's eventual sale price of the property.


Chairman