

ADVISORY OPINION NO. 95-30

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 6, 1995

PUBLIC SERVANT SEEKING OPINION

Executive Director of County Housing Authority

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code §61-10-15 for a public servant to bid on and receive contracts to perform services for public entities?

FACTS RELIED UPON BY THE COMMISSION

The requester is the executive director of a County Housing Authority. She also is a part-time employee of that County's County Commission and a member of the board of directors of that County Redevelopment Authority. In private life she is the President of a private corporation which provides administrative services to various governmental organizations. Such services include secretarial services, bookkeeping, grant writing and administration, and preparation of policies for agencies.

The requester would like her private company to provide its services to: municipalities, solid waste authorities (including the one for her County), city housing authorities, airport authorities (including the one for her County), redevelopment authorities (including the one she serves on), and community action agencies. The latter are private, non-profit organizations that receive public funding.

The requester would also like to bid, through her private company, to submit a proposal to provide feasibility studies for any of the above listed agencies. A feasibility study would be required if the agency receives preliminary approval for a grant for which the requester prepared the application on behalf of the agency.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §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 §6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee ...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 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.

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

West Virginia Code §61-10-15

West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when she may have voice, influence or control over the letting of such contract.

The Commission finds that the requester's part-time employment with the County Commission as project coordinator does not give her presumptive voice, influence or control over the contracts of that County Commission or, through it, the contracts of the County's Solid Waste Authority or the County's Airport Authority. Therefore, it would not be a violation of WV Code §61-10-15 for her to contract to provide administrative services to those governmental organizations.

However, her position as a member of the board of directors of the County Redevelopment Authority does give her voice, influence and control over that Authority's contracts. Therefore, it would be a violation of WV Code §61-10-15 for the requester or her private company to contract to provide services to the County Redevelopment Authority. This restriction would not apply to other County Redevelopment Authorities of which she is not a board member.

The Ethics Act

West Virginia Code §6B-2-5(d)(1) prohibits a public servant from having a private interest in any public contract over which she may have authority or control. Currently, the requester is the President of a private corporation which contracts to provide administrative services to various governmental organizations. The requester's affiliation as a mere contract employee with municipalities, solid waste authorities, housing authorities, or other governmental agencies does not give her authority over the contracts awarded by those public entities.

Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for the requester to submit a proposal and accept a contract to prepare policies or provide additional administrative services to public entities when she already is under contract to provide certain other services to those agencies.

Further, it would not be a violation of this section for the requester to submit a proposal and accept a contract to conduct a feasibility study even when this study is connected with a grant that an agency received initial approval for based upon a grant application previously prepared by the requester.

These determinations are made with the understanding that the requester has no authority or control over the decisions made by any of these entities to enter into a contract with her private company.

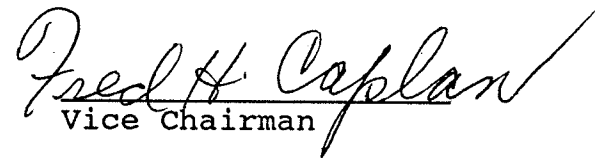
The Commission also notes that WV Code §6B-2-5(d)(1) contains an express proviso which states that this section shall not prevent or make unlawful the employment of any person with any governmental agency. Consequently, it would not be a violation of the Ethics Act for the requester or her private company to contract to provide services to a County Redevelopment Authority even though she is a member of the board of directors of that Redevelopment Authority. However, as discussed previously, this is academic as to her County's Redevelopment Authority in light of the prohibition against all pecuniary interests in public contracts established in WV Code §61-10-15.

The Ethics Commission also cautions the requester to be aware that other provisions of the code of conduct must be complied with if she intends to seek contracts for temporary part-time public employment which would not be prohibited by WV Code §61-10-15 and/or WV Code §6B-2-5(d).

West Virginia Code §6B-2-5(b)(1) prohibits public servants from using their position, or its prestige, for their own private gain or the gain of another. Therefore, the requester may not use any of her full or part-time public positions to influence, obtain, increase or promote personal her interests or the interests of her private corporation.

West Virginia Code Section 6B-2-5(e) prohibits public servants from improperly disclosing confidential information acquired in the course their official duties or from using such information to further personal interests. Therefore, the requester may not disclose or use any confidential information acquired by her in any of her public employment positions to assist any other public employer or her private employment interests.

The Commission is sensitive to the extensive involvement the requester has with various agencies in her county. Therefore, she should be particularly mindful of the cautions listed in the preceding paragraphs.


Vice Chairman