ADVISORY OPINION NO. 2013-07

Issued On March 7, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Agency** asks whether a State Legislator may apply for a residential housing loan through a program it administers.

FACTS RELIED UPON BY THE COMMISSION

The Requester has various statutory duties, including making loans for residential and multi-family housing. A Legislator may apply for a housing loan. The Requester wants to ensure that no restrictions in the Ethics Act prohibit the Legislator from applying for, or obtaining, a loan.

The Requester states that the applicant must meet all of the program requirements. Additionally, the Legislator would have no involvement in the agency's decision to accept or reject the loan application.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code§ 6B-2-5(b) reads in relevant part:

> (b) Use of public office for private gain. -- (1) 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...

W.Va. Code§ 6B-2-5(d) reads in relevant part:

> (d) Interests in public contracts. --
>
> (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, 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 the official or employee may have direct authority to enter into, or over which he or she may have control... Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body...

W. Va. Code§ 6B-2-5(e) reads in relevant part:

(e) Confidential information. -- 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.

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The Ethics Commission has previously considered, in relevant part, the question presented. In particular, in A.O. 92-33, the Commission held that nothing in the Ethics Act prohibited a private corporation, in which a Legislator was a partner or stockholder, from applying to a State Agency for loan financing.

Here, the fact that the Member of the Legislator may apply directly for a loan, as opposed to having an interest in the loan application as a stockholder, does not change the conclusion reached in A.O. 92-33. In particular, the Ethics Act specifically provides that no provision therein prohibits a Member of the Legislature from entering into a contract with the State of West Virginia. This provision in the Ethics Act permits a Member of the Legislature to apply to the Requester's agency for a loan.

Of course, Members of the Legislature may not use the prestige of their positions to obtain favorable treatment. Additionally, in seeking such a loan, he or she may not use confidential information, if any, obtained during the course of their Legislative duties. Finally, the Requester shall process the Member of the Legislature's application in the same manner as any other applicant.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.,* and does not purport to interpret other laws or rules. In accordance with W. Va. Code§ 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other similarly situated public servants unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman