

ADVISORY OPINION NO. 90-114
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Appointed Member of a County Planning Commission

OPINION SOUGHT

Whether it is a violation of the Act for an appointed member of a County Planning Commission, who is a realtor to sell property to the Planning Commission Director?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is a member of a County Planning Commission and was appointed by the County Commission. She receives no remuneration for her services but is reimbursed for any expenses she incurs.

Professionally the requestor is an independent realtor contracting under the brokerage of a local realty company. The Planning Commission member would like to show and sell property to the new County Planning Commission Director for his personal residence.

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 may not knowingly and intentionally use her office or the prestige of her office for her own private gain...

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no appointed public official...or business with which 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 she may have control.

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of West Virginia Code 6B-2-5(d)(1) follows:

Based on the facts presented, it is the Commission's opinion that this would not be a public contract. Since this would be a private contract (between the new Director and the Realty Company) and not of a public nature it would not fall within the prohibitions contained in subsection 6B-2-5(d)(1).

However, if the County Planning Commission is purchasing the residence for the new Director the following analysis would be applicable. The Commission finds that the appointed member of a County Planning Commission is a public official who has direct authority or control over the letting of public contracts by the Planning Commission.

The realtor in this instance does not have any ownership interest in the realty company, and as an independent broker she has only a limited interest in the profits or benefits of any contract between the realty company and the Planning Commission.


An analysis of the facts presented and the pertinent statutory provisions of West Virginia Code 6B-2-5(b)(1) follows:

Subsection 6B-2-5(b)(1) of the Act prohibits a public official from intentionally and knowingly using his or her office for private gain. The question before the Commission in this instance is whether a realtor, who is also a member of a County Planning Commission is prohibited from showing homes to the new Planning Director when that realtor would receive a commission from any resulting sale.

The Legislature recognized in passing the Ethics Act that many part-time public officials serving in appointed capacities, have inherent conflicts of interest in their part-time service which do not disqualify the individual in every instance from his or her official responsibilities.

It is the Commission's opinion, that the requestor would be "showing houses" to the Director in her non-official capacity as a realtor and not using her position as a Planning Commission member for private gain. Recognizing that it is difficult to separate the member's private employment as a realtor and her meeting the Director through her public responsibilities as a Planning Commission member, the Commission finds that it is not a knowing and intentional use of the member's official position for private gain and therefore, not a violation of subsection 6B-2-5(b)(1).

The Commission further finds that any private gain that may result to the member from these circumstances was not such as was contemplated by the Legislature to be prohibited when enacting subsection 6B-2-5(b)(1).


Chairman