ADVISORY OPINION NO. 2013-23

Issued On June 6, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commissioner** asks whether a local Public Service District may give unused or out-of-service property to its employees, and whether those employees may sell said property and keep the money from such sales; and, if not whether the Public Service District may use E-bay or another auction site to dispose of such equipment.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a County Commissioner. The County Commission is authorized to appoint members of the local Public Service District (PSD) pursuant to W. Va. Code §16-13A-3. W. Va. Code§ 16-13A-21 provides that every PSD "organized, consolidated, merged or expanded under this article is a public instrumentality created and functioning in the interest and for the benefit of the public....."

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b)(1) reads:

> 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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. 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.

ADVISORY OPINION

This is a matter of first impression for the Ethics Commission. Since the Ethics Act expressly prohibits public servants from using their public position for private benefit, the Commission hereby finds that the Ethics Act prohibits a local Public Service District from giving unused or out-of-service property to its employees for **any** purpose. Further, the Commission finds that such employees are prohibited from selling said property and keeping the money from such sales. Neither of these transactions constitutes incidental use. Further, neither of these transactions involves the

performance of usual and customary duties associated with the office.

As to the second question, the Ethics Commission lacks jurisdiction to opine about the appropriate disposition of surplus or property by the PSD, so long as the disposal of said public property does not result in private gain.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 68-1-1, *et seq.,* and does not purport to interpret other laws or rules. In accordance with W. Va. Code§ 68-2-3, 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