ADVISORY OPINION NO. 2013-26

Issued On June 6, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Public Employee of a County Development Authority asks whether her husband may apply for a small business loan through a program the Authority administers.

FACTS RELIED UPON BY THE COMMISSION

The County Development Authority (Authority) encourages, assists, and promotes industrial, economic, commercial, recreational, and educational development in the county. The Authority has various duties, including awarding small business loans made possible through the West Virginia Small Business Development Center (WVSBDC). (WVSBDC is a division of the West Virginia Development Office and is funded by the State of West Virginia, the United States Small Business Administration, and other partners.) The Requester is employed as a bookkeeper for the Authority. The Requester's husband would like to apply for a loan to open a small business.

The Requester states that she is not directly involved with the loan program, or any process with obtaining a loan or the repayment of any loan. She further states that the Authority has a loan manager for such purposes. The Requester does not even process any of the paperwork related to the loan program. The Requester wants to ensure that the Ethics Act does not prohibit her husband from applying for, or obtaining, a loan.

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.

ADVISORY OPINION

In Advisory Opinion 98-24, A City Council Member asked whether it would violate the Ethics Act, if she and her husband received a loan from the City's Housing Department. There the Director of the Housing Department was appointed by the Mayor. The Department processed and approved loan applications and directly disbursed the money (provided by federal funding). Although City Council approved the Department's overall budget, Council did not approve individual loan applications. The Commission wrote that the Ethics Act's prohibition against having an interest in a public contract "is not intended to deny the Council Member and her spouse the benefit of a loan program administered by the City's Housing Authority, simply because she serves on Council", and concluded that it would not violate the Ethics Act for the Council Member and her spouse to obtain from the City's Housing Authority a low interest loan to which she was otherwise entitled.

Here, the fact that the Requester is employed by the Authority which makes the loans should not bar her husband's eligibility therefor. Thus, the Ethics Act does not prohibit her husband from seeking and obtaining a loan the Authority. The Requester may not, however, use her position to influence the Authority's actions to obtain preferential treatment, terms, conditions or other consideration not available to the general public. Additionally, in seeking such a loan, she may not use confidential information, if any, obtained during the course of her public duties. Finally, the Authority shall process the Requester's husband'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