

ADVISORY OPINION NO. 89-84

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

A member of a State Commission

OPINION SOUGHT

Whether it is a violation of the Act for an individual to continue to serve on a State Commission who has an interest in a realty company that receives rent funds from a federal agency?

FACTS RELIED UPON BY THE COMMISSION

A member of a State Commission has a 25% partnership interest in a realty company. The net value of his interest exceeds \$30,000.00.

Certain tenants' rent are paid by the Housing Authority of the city with funds obtained directly from the federal government under Section 8 of the 1974 Housing and Community Development Act. No State agency plays any part, directly or indirectly, in the program or its funding.

However, other tenants are accepted whose rent is paid by the West Virginia Department of Human Services under the Homeless Program.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no appointed public official...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 with the governmental body over which he or she has direct authority or with which he or she is employed.

ADVISORY OPINION

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

1. The Commission Member is an appointed public official.
2. The Commissioner has more than a limited interest in the realty company currently receiving funds from the federal government and in some instances the West Virginia Department of Human Services.

3. Limited interest is defined as an interest not exceeding ten percent of all outstanding shares or thirty thousand dollars whichever is the lesser.

4. However, the agency (Department of Human Services) from which the realty company receives profits or benefits is not an agency which employs the Commissioner nor one over which he has direct authority.

5. Therefore, it is not a violation of subsection (d)(1) for the Commissioner to continue to serve on the State Commission.


Chairman