ADVISORY OPINION NO. 2013-36

Issued On August 1, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Assessor** asks whether his office may purchase office supplies from a company owned by his employee's fiance.

FACTS RELIED UPON BY THE COMMISSION

The Requester is an elected County Assessor. His office currently purchases office supplies from a company which is being purchased by the fiance of an employee in his office. The employee is a clerk for the personal property division of the Assessor's office. The employee has no involvement in making purchasing recommendations or decisions. Rather, another employee is responsible for ordering office supplies, and the Requestor authorizes the purchases. The Requester asks whether his office may continue to purchase office supplies from the company once it is owned by the employee's fiance. The Requester states that he does not have any financial interest or personal relationship with the employee or her fiance.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

> A public official ... may not knowingly and intentionally use his ... office or the prestige of his... office for his... own private gain or that of another person.

W. Va. Code§ 6B-2-5(d)(1) reads, in pertinent part:

> In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected ... official ... or member of his... immediate family ... may be a party to or have an interest in the profits or benefits of a contract which the official ... may have direct authority to enter into, or over which he ... may have control

W. Va. Code§ 61-10-15(a) states, in pertinent part:

> (a) It is unlawful for any ... county ... officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control ....

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Both the Ethics Act and W.Va. Code§ 61-10-15 prohibit county public officials from having an interest in public contracts. Specifically, W.Va. Code§ 6B-2-5(d)(1) states a public servant may not "have an interest in the profits or benefits of a contract which the official ... may have direct authority to enter into, or over which he ... may have control ...". W. Va. Code§ 61-10-15, a separate criminal statute, imposes criminal penalties against County officials who are pecuniarily interested, either directly or indirectly, in the proceeds of a public contract over which those officials exercise "voice, influence, or control."

Here, the Requester asserts that the position of clerk for the personal property division has no involvement in the purchasing process. Therefore, the Requester would not violate the Ethics Act by purchasing supplies from this vendor. Of course, the Requester may not choose to purchase from any the office employee's fiance or any particular vendor based upon favoritism.

Notwithstanding this conclusion, our inquiry does not end here. Because the Requester and employee are county employees, we must next analyze whether W. Va. Code§ 61-10-15 prohibits the purchases. This statute has stricter standards than the Ethics Act in that it states that an employee may not have "any voice, influence or control" over the purchases. The Commission finds that since the employee has no involvement whatsoever in purchasing decisions for the Assessor's office, she does not have any voice, influence or control over the purchase of office supplies. Moreover, she is not a "county official" for purposes of the criminal statute which applies only to"... a member, officer, secretary, supervisor, superintendent, principal or teacher." *See* Advisory Opinion 2012-03 wherein the Commission ruled that a Deputy Chief/Supervisor is an employee of the agency, and is not a county officer for purposes of§ 61-10-15. *See also* Advisory Opinion 97-34 wherein Commission held that County Health Administrator is not one of statutorily enumerated positions. The administrator is an employee, not an officer, for purposes of§ 61-10-15. However, the Requester, County Assessor, is a county official subject to 61-10-15. But, he would not violate the statute by purchasing from the employee's fiance because the employee does not have any voice, influence or control over the purchases and he has no personal or financial relationship with the employee or her fiance.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, et seq. and W. Va. Code§ 61-10-15, 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 public agencies unless and until it is amended or revoked, or the law is changed.

/s/ Jonathan E. Turak
Jonathan E. Turak, Acting Chairperson