ADVISORY OPINION NO. 2013-41

Issued on October 3, 2013 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Potential Candidate for County Commission** asks whether, if elected, he may continue his employment with the County Ambulance Authority.

FACTS RELIED UPON BY THE COMMISSION

The Requester is employed full-time by a County Ambulance Authority (Authority). He is also considering running for election to the County Commission in the same county.

The employees of the Ambulance Authority, including the Requester, report directly to the Executive Director, who is chosen by the Ambulance Authority's Board of Directors. Pursuant to W. Va. Code§ 7-15-5, the County Commission appoints the members of the Authority's Board.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(d)(1) provides in part that no elected official or business with which he or she is associated may be a party to or have an interest in a contract which such official ... may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body....

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

> It is unlawful for any member of a county commission ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which such ... member ... may have any voice, influence, or control....

W. Va. Code § 7-15-4 states in part:

> [T]he county commission shall cause emergency ambulance service to be made available to all the residents of the county where such service is not otherwise available.... Each authority shall constitute a public corporation, and as such, shall have perpetual existence.

W. Va. Code§ 7-15-5 states in part:

> The management and control of any [ambulance] authority, its operations, business and affairs shall be lodged in a board of not less than five nor more than

fifteen individuals who shall be known as members of the board and who shall be appointed for terms of three years each by the governing bodies of the participating governments.

ADVISORY OPINION

Both the Ethics Act, W. Va. Code§ 6B-2-5(d)(1), and a separate criminal misdemeanor statute, W. Va. Code§ 61-10-15, prohibit county officials from having an interest in public contracts. Although the Ethics Act expressly excepts employment contracts, W. Va. Code§ 61-10-15 does not.

Thus, the analysis herein will be limited to W. Va. Code§ 61-10-15, as a discussion of the provisions of the Ethics Act would be purely academic.

In Advisory Opinion 94-30, the Ethics Commission found that a County Commissioner may not have an interest as a realtor in the sale of property owned by the County Development Authority where a County Commission appoints all of the board members of a Development Authority. Specifically, the Commission stated as follows:

> [T]hat the power of the county commission to appoint the members of the County Development Authority, along with the authority to make contributions from general funds and transfer and convey property to the Authority, is sufficient to give the requester some voice or influence over the Development Authority's contracts. Consequently, the requester's position as a county commissioner does give her the degree of control contemplated by WV Code 61-10-15.

This case presents the same conflict that existed in Advisory Opinion 94-30. The County Commission appoints all members of the Authority and has authority to make contributions from general funds. If elected to the position of County Commissioner, the Requester would have voice, influence, or control over the Authority which in turn has control over the Requester's employment vis-a-vis the Authority's Executive Director. W. Va. Code§ 61-10-15 prohibits county officials from having even an indirect pecuniary interest in a contract over which they have voice, influence, or control.

Therefore, the Commission hereby finds that W. Va. Code§ 61-10-15 prohibits the Requester from serving on the County Commission while employed by the Authority.

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/ R. Kemp Morton, Chairman
Kemp Morton, Chairman