ADVISORY OPINION NO. 2013-55

Issued on November 7, 2013 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Assessor** asks if his daughter may purchase property in the County, and whether he and his wife may purchase property in the County in which he serves as Assessor.

FACTS RELIED UPON BY THE COMMISSION

A County Assessor's adult daughter, who lives separately from the Requestor, would like to purchase property in the County in which her father serves as the elected County Assessor. The Assessor also asks if he and his wife may purchase property for themselves.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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

> (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.... 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.

W.Va. Code§ 68-2-5 (h) reads, in relevant part:

> (1) No full-time official or full-time public employee ... may seek ... to purchase, sell or lease real or personal property to or from any person who:
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> > (A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or
> >
> > (B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

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W. Va. Code§ 11-3-1 mandates that all property be assessed annually as of the first day

of July at its true and actual value. The responsibility for determining the annual assessment for each property lies with the elected County Assessor and those in his/her employ. This assessment is used as the basis for the levy of a property tax upon the property owner. This assessment is a governmental action by the County Assessor, and constitutes a "regulatory action" upon each property owner within the county.

The Ethics Act prohibits full-time public servants from purchasing, selling, or leasing either real or personal property to or from any person who had a matter on which he took, or a subordinate is known to have taken, regulatory action within the preceding twelve months or who has a matter before the agency on which the public servant or a subordinate is working. The rationale behind such prohibition, including an attempted sale or purchase, is to prevent a conflict of interest and/or a coercive contract.

The language of W. Va. Code§ 6B-2-5(h) does not extend the prohibition on the purchase of real or personal property to non-dependent family members. Additionally, nothing in the Ethics Act creates such a prohibition. Therefore, the Requester's adult, non-dependent daughter is not prohibited from purchasing property in the County in which her father, the Requester, is the elected County Assessor, so long as neither he nor his wife have any ownership interest themselves.

This prohibition does not, however, apply to purely personal transactions; the Requester may buy and sell a personal home. See W. Va. Code§ 11-3-17 (authorizing the assessor to assess the property of deputy assessors, and a deputy assessor to assess the assessor's property).

Additionally, the limited exception contained in W. Va. Code§ 11-3-17 does not prohibit the Requester and his wife from purchasing property within the County in which he serves as County Assessor for purely personal transactions. County Assessors are prohibited from engaging in real estate transactions for commercial purposes, either through a business, or more informally by buying and selling property on the side. See Advisory Opinion 2011-14.

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. Pursuant to W. Va. Code§ 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked.

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman