

**PROPERTY EXEMPTION NO. 2010-01**

**Issued On August 5, 2010 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**OPINION SOUGHT**

**Robert Whipp**, an employee of the Division of Highways, requests an exemption to sell the mineral rights to his property to a company which the Division of Highways regulates.

**FACTS RELIED UPON BY THE COMMISSION**

Mr. Whipp is employed by the West Virginia Division of Highways (DOH) as a District Engineer. His job responsibilities include approving encroachment permits to persons who seek to connect a private driveway or road to the State road system. In his position, Mr. Whipp also has the responsibility for overseeing road repair work required due to damage to the State road system which may be caused by the frequent ingress or egress of trucks over the roadway.

Chesapeake Energy has purchased the mineral rights for various properties in the subdivision where he lives and property surrounding the subdivision. There are approximately thirteen houses in the subdivision.

This company seeks to purchase the mineral rights to his property. The price offered to other property owners in the subdivision and to him is \$2,800.00 per acre. There may be royalty payments in the future if the company elects to drill for natural gas on the properties; however, it is unknown if and when such drilling will begin.

As Chesapeake owns property in his District, from time-to-time he is responsible for issuing encroachment permits to this company or working with the company on road repair matters.

Another District Engineer has agreed to handle the permit requests from Chesapeake Energy for Mr. Whipp's District. This District Engineer will further oversee any requests from the DOH to Chesapeake to repair any roadways. Hence, he is able to remove himself from the decision-making process in regard to Chesapeake Energy.

**CODE PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code § 6B-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... property to or from any person who:

(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.

...

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition...

West Virginia Code § 6B-1-3(g) defines person as:

Any individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons...

### **ADVISORY OPINION**

The Commission has had limited opportunities to address the question presented. The Ethics Commission must first consider whether Requester Whipp exercises regulatory control over the company from which he seeks to sell real property. The Commission finds that his power to approve or deny a permit constitutes regulatory authority.

Next, due to the restrictions on selling property to regulated entities, the Commission must consider whether to grant an exemption to allow him to sell the mineral right to his property to Chesapeake. The Commission may grant an exemption if it finds that he will be adversely affected if he is unable to sell the property.

The Commission finds that in his capacity as a private citizen, he would be adversely affected if he is prohibited from selling his property/mineral rights to Chesapeake Energy, particularly as another District Engineer is willing and able to take over his responsibilities in regard to Chesapeake. The Ethics Commission finds that the overriding purpose of the exemption requirement is to implement safeguards to ensure that the process is transparent, that the transaction is arm's length and that the employee's supervisor, or his designee, oversees his work relating to this company during the negotiation period and for a period of time thereafter in order to ensure that there is no favoritism or the appearance of favoritism in regard to the regulatory authority exercised over this company.

The Ethics Commission hereby grants an exemption to Mr. Whipp to allow him to sell the mineral rights to Chesapeake property provided that the following conditions are met:

**First**, the Requester shall notify his supervisor of his intent to sell the mineral rights to Chesapeake and provide him or her with a copy of this exemption. He must further inform his supervisor that another District Engineer is ready and willing to take over his responsibilities in regard to Chesapeake. Further, Requester Whipp shall obtain the approval of his supervisor for this transfer of authority.

**Second**, the Requester shall provide Chesapeake with a copy of this exemption and let the company's representatives know that if they have any questions or concerns, they may contact his supervisor or the Ethics Commission.

**Third**, the Requester states that Chesapeake is paying \$2,800.00 per acre. The Requester shall submit written documentation to the West Virginia Ethics Commission from Chesapeake that \$2,800.00 per acre is the amount it has paid for mineral rights in the subdivision and that this is the amount it is offering him for his mineral rights.

**Fourth**, the sale may not be finalized until the foregoing documentation is provided to the Executive Director of the West Virginia Ethics Commission. If satisfied that the documentation reflects that the mineral rights are being purchased at the same rate as other mineral rights purchased in the subdivision, the Executive Director shall write the Requester a letter authorizing him to proceed with the transaction at an amount not to exceed \$2,800.00 per acre. If the Executive Director believes that additional information is required, she may request it or refer this matter to the Commission for further consideration.

**Fifth**, the Requester may **not** work on Chesapeake Energy matters for one year following the sale. If at the conclusion of the one year period no royalties are being paid, then the Requester may resume his oversight of Chesapeake. However, if royalty payments begin at any point thereafter, he must remove himself from Chesapeake matters and refer them back to the other District Engineer.

The Commission notes that exemptions must be granted on a case-by-case basis. Therefore, this opinion is limited to the facts and circumstances of this particular case, and may not be relied upon as a precedent by other persons or entities.

  
Jonathan Turak, Acting Chairperson