

ADVISORY OPINION NO. 91-29

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 2, 1991

GOVERNMENTAL BODY SEEKING OPINION

The Executive Director of a Housing Authority

OPINION SOUGHT

- a. Whether it is a violation of the Ethics Act for the Executive Director of a County Housing Fund to be **employed** by the County Commission on a **part-time basis** to provide management services for community development block grant programs?
- b. Whether it is a violation of the Ethics Act for the Executive Director of a County Housing Fund to **own a private consulting corporation** which contracts with various governmental agencies to provide management services for community development block grant funds?

FACTS RELIED UPON BY THE COMMISSION

The Department of Housing and Urban Development (hereafter referred to as H.U.D.) is a federally funded program. Payments for the projects funded by this program are dispensed directly through the federal office.

One function of H.U.D. is to fund projects for County Housing Authorities. The requestor is the Executive Director of a County Housing Authority which oversees rental subsidies and public housing programs. The purpose of these programs is to assist in housing and community rehabilitation.

The requestor does not have direct authority or control over the disbursement of the funds for this program. When allocating the funding for County projects the Executive Director must follow a strict process proscribed by H.U.D. which includes a numerical waiting list with no discretion on the part of the Executive Director.

### **Part-time Employment**

H.U.D. has given the Executive Director of the County Housing Authority clearance to be employed on a part-time basis with the County Commission to act as the Administrator of the Community Development Block Grant programs. Although the Block Grant programs are federally funded the monies for such programs are channeled through the State. Community Block Grant Funds are used for water and sewage projects and treatment facilities.

One of the requestor's duties as the Administrator of the Community Development Block Grant programs is to complete the required written application form, ecological reports and reviews which are then submitted in conjunction with the request for project funding to the Governor. Once the funding for the program is approved, professional services are contracted through a competitive bid/negotiation process by the County Commission. The requestor does not have any authority or control over the letting of such bids or the distribution of such funds.

### **Private Consulting Corporation**

Also, the requestor has formed a private consulting corporation which provides management services to private companies and governmental agencies. These management services would include providing the required assistance when completing the application for block grant funds and bids for such funds.

The requestor would like to know if it would create a conflict of interest for her private Company to contract to manage housing complexes with certain governmental agencies which conduct business with or are regulated by the Department of Housing and Urban Development. These agencies submit applications to H.U.D. for monies to fund rental assistance programs. As previously stated, the requestor does not have direct authority or control over the disbursement of H.U.D. funds. Further, the requestor has stated that at this time she does not have any interest in pursuing housing contracts.

As the Executive Director of the County Housing Authority and the Administrator for the County Block Grant programs, the requestor does not have access to any confidential information.

### **PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...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.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no public official...or a business with which he...is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee 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...

West Virginia Code Section 6B-2-5(e) states in pertinent that...no present or former public official...may knowingly and improperly disclose any confidential information acquired by him...in the course of his...official duties nor use such information to further his...personal interests or the interests of another person.

West Virginia Code 6B-2-5(h)(1) states that no full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow...herself to be employed by any person who is or may be regulated by the governmental body which...she serves while...she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

### **ADVISORY OPINION**

#### **Public Contracts**

a. Pursuant to subsection 6B-2-5(d)(1) of the Ethics Act a public official may not have more than a limited interest in the profits or benefits of a public contract over which she has direct control. As a part-time **employee** of the County Commission she would have a limited interest in the block grant fund monies. Further, the requestor has stated that she does not have direct authority or control over the disbursement of block grant funds. Also, the Commission would note that the subsection 6B-2-5(d)(1) specifically provides that nothing shall be construed to prevent or make unlawful the employment of any person with any governmental body.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for the Executive Director of a County Housing Fund to be employed by the County Commission on a part-time basis to provide management services for community development block grant programs.

### **Part-time Employment**

Pursuant to subsection 6B-2-5(h) of the Ethics Act a full-time public official who exercises policymaking, nonministerial or regulatory authority may not seek employment with or allow herself to be employed by any person who is or may be regulated by the governmental body which she serves. Although, the Executive Director of the County Housing Authority is a full-time employee, the Authority would not regulate the County Commission Block Grant programs or any potential clients of her private company. Therefore, the prohibition established in subsection 6B-2-5(h) of the Ethics Act would not be applicable to this specific situation.

b. Pursuant to subsection 6B-2-5(d)(1) of the Ethics Act a public official may not have more than a limited interest in the profits or benefits of a public contract over which she has direct control. As previously noted the requestor does not have direct authority or control over the disbursement of block grant funds.

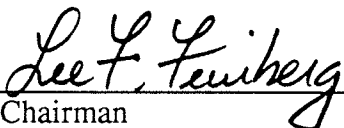
Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for the Housing Authority's Executive Director to own a private consulting company which contracts with various governmental agencies and private companies to provide management services for community development block grant funds.

### **Private Gain**

Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act, a public official may not knowingly or intentionally use her office or prestige for private gain. The Commission determined in Advisory Opinion No. 91-02 that the use of general information, knowledge and experience gained through a public employment position would not be considered a use of public office for private gain as meant by the Ethics Act. Simply, using her knowledge of the block grant fund program bid process to assist in the completion of the required applications and such bids would not be a violation of subsection (b)(1).

### **Confidential Information**

However, the Executive Director should be mindful of subsection 6B-2-5(e) of the Ethics Act. This subsection would prohibit the public official from disclosing or using any confidential information acquired by her through her public employment position as the Executive Director of the County Housing Authority to assist her secondary employer or clients of her private company in any manner.

  
Chairman