

ADVISORY OPINION NO. 91-63
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON SEPTEMBER 13, 1991

GOVERNMENTAL BODY SEEKING OPINION

A County Clerk

OPINION SOUGHT

Whether it would be a violation of the Ethics Act for a County Clerk to have a pecuniary interest in the profits or benefits of a public contract awarded by the County Commission?

FACTS RELIED UPON BY THE COMMISSION

On April 29, 1988, a purchasing agent for a County Commission was advised by the Sheriff that the County's gasoline tank was empty and the officers could not perform their law enforcement duties without the fuel necessary for transportation. The Sheriff's Department did not have credit cards to use to purchase gasoline from local stations.

One local supplier of gasoline indicated that he could not deliver the fuel until after the weekend. When the usual supplier could not fill the County's order immediately, another Oil Company was contacted and agreed to deliver a quantity of gasoline that evening.

When the invoice in the amount of \$2,056.02 was submitted by the Oil Company, the County Commission did not pay the invoice because of their concern of a possible conflict of interest pursuant to West Virginia Code §61-10-15 since the County Clerk was an officer and stockholder in this Company. However, the County Clerk did not have any voice, influence or control over the contract for the purchase of the County's gasoline.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected public official or member of his or her immediate family...may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he or she may have control...

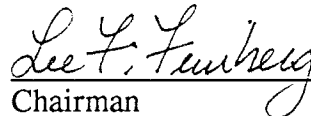
ADVISORY OPINION

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 he has direct control. However, the County Clerk does not have authority or control over the letting of contracts by the County Commission.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Act for the County Clerk to have a pecuniary interest in the profits or benefits of a public contract awarded by the County Commission since the County Clerk does not have any authority or control over the letting of such contract.

West Virginia Code §61-10-15 provides that it is unlawful for a County official to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service over which as such member he may have any voice, influence or control. However, as noted above, the County Clerk does not have influence, voice or control over public contracts awarded by the County Commission. Therefore, it would not be a violation of West Virginia Code §61-10-15 for the County Clerk to have a pecuniary interest in the profits or benefits of a public contract awarded by the County Commission.

For further discussion and clarification of the issues outlined herein, see Advisory Opinion #91-66.


Chairman