

ADVISORY OPINION NO. 92-51

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 7, 1993

GOVERNMENTAL BODY SEEKING OPINION

Executive Director of a County Development Authority

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Development Authority member to participate in the review of a revenue bond resolution and make a recommendation to the County Commission regarding the approval or denial of the resolution when such member has a pecuniary interest in the project?

FACTS RELIED UPON BY THE COMMISSION

The County Development Authority is a quasi-public corporation. One of its functions is to review all industrial revenue bond resolutions for inducement and make recommendations to the County Commission. The County Commission makes the final decision to approve or deny the inducement. In most instances the County Commission follows the Authority's recommendations when making its decision on requests for revenue bonds.

A company is coming before the Development Authority to present its request for a tax exempt bond inducement from the County. Part of the project involves the purchase of a large facility from a local corporation in which an officer of the Development Authority owns stock. The officer owns less than 1% of the corporation's outstanding shares of stock.

The officer of the Development Authority will not participate in the discussion of this project nor vote on the recommendation of the bond inducement to the County Commission.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-2(c) states in pertinent part that...local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

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

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of any county or district board...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.

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Voting

West Virginia Code §6B-1-2(c) provides that a part-time public official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal". The Commission considers a matter to be "personal" when the public official has any direct or indirect pecuniary interest in the matter, or when voting would give the appearance of impropriety. The Commission has determined that in order for a public official's recusal to be effective he must physically remove himself from the room during the discussion and decision making process.

The Commission finds that the possible financial benefit to the requestor, if the bond proposal is approved, constitutes a personal conflict. Therefore, the requestor should recuse himself from voting, deliberating or taking any official action as a member of the County Development Authority regarding the recommendation of a bond inducement which may affect the corporation in which he owns stock.

Private Gain

Further, pursuant to WV Code §6B-2-5(b)(1), public officials may not use their office or its resulting prestige for their own private gain or for the private gain of another. Therefore, the requestor may not use his position as a Development Authority member to influence, obtain, increase, or promote his personal interests as a stockholder of the local corporation.

WV Code §61-10-15

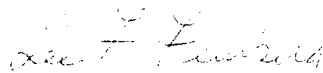
West Virginia Code §61-10-15 provides that it is illegal for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of **any** contract or service when he may have voice, influence or control over the letting of such contract. The Commission considers the County Development Authority members to be county officers as that term is defined in this statute.

Any official who violates this provision is guilty of a misdemeanor and subject to removal from office. The recusal of a public official from voting on a particular matter in which he has a direct or indirect pecuniary interest is not sufficient to immunize that official from the sanctions of this statute.

The County Development Authority is responsible for reviewing all industrial revenue bond resolutions and making recommendations regarding such bond inducements to the County Commission. The County Commission usually relies on the Authority's recommendation when it makes the decision to approve or deny the inducement.

As noted above, a member of the County Development Authority has a pecuniary interest in a project which is set for review by the Authority. The Ethics Commission finds that the Authority's duty to review and recommend bond requests for that project is sufficient to give the Authority member, voice, influence or control over the contract for the sale of property which would result if the bond inducement for the project is approved. Consequently, the Authority member's position does give him the degree of control contemplated by WV Code §61-10-15.

Therefore, it would be a violation of WV Code §61-10-15 for a County Development Authority member to participate in the review of a revenue bond resolution and make a recommendation to the County Commission regarding the approval or denial of the resolution when such member has a pecuniary interest in the project.



Chairman