

ADVISORY OPINION NO. 93-05

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 4, 1993

GOVERNMENTAL BODY SEEKING OPINION

A Member of a County Commission

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Commission member to bid on a water line project being awarded by the County's Public Service District?

FACTS RELIED UPON BY THE COMMISSION

The members of the county's Public Service District are appointed by the County Commission. The requestor is a member of that County Commission and a private contractor who would like to bid on a water line project being awarded by the County Public Service District. There is no county money involved in this project and the County Commission does not have authority or control over the award of the contract. However, the County Commission did assist the PSD in choosing the precise area to be served by the project and in obtaining funding sources.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-2(c) states in pertinent part that...the State government and its many public bodies and local governments have many part-time public officials...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...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.

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she 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...

West Virginia Code §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.

ADVISORY OPINION

Ethics Act

The requestor is a member of a County Commission and a contractor who would like to bid on a water line project being let by that County's Public Service District. Pursuant to WV Code §6B-2-5(d)(1) 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 authority or control. The requestor's potential contract for the water line project is one in which he has a direct pecuniary interest. However, neither the requestor nor the other County Commission members have direct authority or control over the award of such contract.

Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for a County Commission member to bid on a water line project being awarded by the County Public Service District.

West Virginia Code §6B-2-5(b)(1), provides that a public official may not use his public office or resulting prestige for his own private gain or for the private gain of another. Therefore, the requestor may not use his position as a County Commission member to influence, obtain, increase, or promote his personal interests as a potential contractor with the Public Service District or any other entity.

Further, WV Code §6B-1-2(c) provides that a part-time elected 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, is affected in a manner which may influence his vote, 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.

Therefore, as a member of the County Commission, the requestor should recuse himself from voting, deliberating or taking official action regarding the Public Service District which may affect his bid or contract with such District. This would include voting on the County Commission's appointments to the Public Service District.

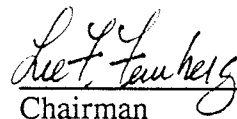
WV Code §61-10-15

West Virginia Code §61-10-15 provides that it is a criminal violation 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.

As previously noted, the requestor is a member of the County Commission and would like to submit a bid for a water line project being awarded by the county's Public Service District. This potential contract is one in which the requestor has a direct pecuniary interest. Although the County Commission does not have direct authority or control over the decision to award this contract, the Commission does appoint the members of the Public Service District and did assist the District in sight selection and obtaining funding sources for this project.

The Ethics Commission finds that the power of the County Commission to appoint the members of the Public Service District, the broad discretion the County Commission exerts over the PSD pursuant to W Code §16-13A-2, and its assistance in the project's site selection and funding sources is sufficient to give the requestor voice, influence or control over the Public Service District's service contracts. Consequently, the requestor's position as a County Commissioner 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 the requestor to bid on a water line project being let by the County Public Service District.


Chairman