

ADVISORY OPINION NO. 94-19

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 7, 1994

GOVERNMENTAL BODY SEEKING OPINION

A City Housing Authority

OPINION SOUGHT

Is it a violation of the Ethics Act for the Housing Authority to contribute a deferred loan, grant or other monetary assistance to a member of the Housing Authority?

FACTS RELIED UPON BY THE COMMISSION

The Housing Authority was established by the City in 1978 according to the guidelines mandated by the U.S. Department of Housing and Urban Development. Its members are appointed by the City Council. All of the members presently serving on the Authority were appointed at the time of its inception and have since been continuously reappointed by the various administrations.

All monies accumulated by the Housing Authority represent program income generated by repayments of no-interest or low-interest loans or deferred grants made to persons whose properties were rehabilitated under two Federal block grants. Under these two block grants, two areas of the city were designated as neighborhood strategy areas, eligible for public improvements, rehabilitation loans and grants, clearance of land, title clearance, removal of blighting properties, and anything else that might affect the health, safety and welfare of the citizens of those areas. These grants were closed out prior to 1984 and no Federal Funds are currently involved. However, in 1993 the Authority reestablished its loan/grant-based rehabilitation program.

In May 1994 the house trailer owned by a member of the Authority was destroyed by fire. This member is a low income resident of one of the strategy areas and did not have insurance on the property. Two members of the Authority contacted the local Housing Ministry about the situation. The Ministry discussed raising and providing money toward the bank loan that the member would apply for on her own and the Authority discussed the possibility of providing a deferred loan or a grant to cover the cost of site clearance, foundation work, electric hook-ups, and any legal fees involved in clearing the title to the land. The deferred grant could come from an unencumbered balance line item and a mix of transfers from other miscellaneous line items, without taking away anything from the rehabilitation program. Any home owner residing within the strategy areas would be eligible for such relief if they qualified on the basis of income level.

The Authority has provided this type of assistance to other eligible citizens approximately 20 or 25 times over the past ten years. At no time was the Authority member involved in the discussion of either the specific deferred loan or grant proposed for her benefit or the amount of such financial assistance.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...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 ...appointed public official...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...Provided, however, that nothing herein shall be construed to prohibit...a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

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Private Gain

Pursuant to WV Code §6B-2-5(b)(1) public officials may not use their public position or the resulting prestige for their own private gain or for the private gain of another. In this instance, the purpose of the Housing Authority is to provide grants and other assistance to two areas of the city which were designated as neighborhood strategy areas. Citizens in these areas are eligible for public improvements, rehabilitation loans and grants, clearance of land, title clearance, removal of blighting properties, and anything else that might affect the health, safety and welfare of those citizens. Such assistance is available to any individual homeowner in the project area provided they qualify on the basis of income level. Therefore, it would not be a violation of WV Code §6B-2-5(b)(1) for the Housing Authority to provide assistance to a fellow Authority member since she is a qualified individual residing in one of the strategy areas and the proposed project falls within the guidelines of the Authority's activities.

The Commission notes that the affected Authority member may not use her status or influence as a member of the Housing Authority to promote, obtain or increase the assistance she receives from the Housing Authority. The financial package must be equivalent to that available to any other qualified individual in similar circumstances.

Public Contracts

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 or she may have direct authority or control. Obviously, a member of the Housing Authority would have authority and control over all public contracts entered into by the Authority. However, this section specifically states that a part-time appointed public official is exempt from this prohibition provided he seeks to be recused from deciding or evaluating the issue, is excused from voting on the proposal and has fully disclosed the extent of such interest in the matter. 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.

Since a position on the Housing Authority is considered part-time and all members are appointed by City Council, it would not be a violation of WV Code §6B-2-5(d)(1) for the requestor to have a pecuniary interest in the profits or benefits of public contracts over which she may have direct control provided she recuses herself, as outlined above, from the decision to award the deferred loan, grant or other monetary assistance.


Chairman