

ADVISORY OPINION NO. 95-35
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON SEPTEMBER 7, 1995

PERSON SEEKING OPINION

Former member of a city council

OPINION SOUGHT

- 1.) Is it a violation of the Ethics Act for a member of city council to bid on property at a public sale after the city council voted to abandon the property?
- 2.) Is it a violation of the Ethics Act for a former member of city council to file a lawsuit against the city to obtain title to property he bid on while in office?

FACTS RELIED UPON BY THE COMMISSION

While the requester was a member of city council, the council voted to abandon a piece of property adjacent to property already owned by the requester. The motion to abandon the property passed even though the requester voted against abandonment.

The requester then appeared at the public auction for the property and submitted the highest bid. The council, however, voided the sale even though there was no right to reject any bids explicitly reserved to the seller. The property was subsequently abandoned and sold to the second highest bidder at the public sale. The requester's term on council has expired and he is considering litigation against the city to obtain title to the property.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

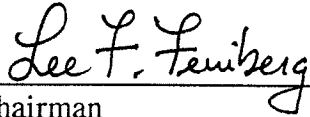
West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such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

West Virginia Code §6B-2-5(d)(3) states in pertinent part that...where the provisions of subdivisions (1) and(2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make a written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

1.) West Virginia Code §6B-2-5(d)(1) prohibits public servants from being a party to or having an interest in any public contract over which their position gives them authority or control. As a member of city council, the requester has authority and control over the city's contracts, including any sale of abandoned property. Therefore, if the sale of the property had gone through, the requester would have been in violation of this provision of the Ethics Act.

2.) Now that the requester is no longer a member of council, he inquires whether he would violate the Ethics Act by filing a lawsuit to obtain title to the property. In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit the requester from pursuing such litigation.


Chairman