

ADVISORY OPINION NO. 95-36
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON SEPTEMBER 7, 1995

GOVERNMENTAL BODY SEEKING OPINION

Director of a County Planning Agency

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 for a County Planning Director to be employed by a municipality as a grant administrator?

FACTS RELIED UPON BY THE COMMISSION

A County Planning Director, in the course of his official duties, has prepared grant applications on behalf of municipalities. He may also be called upon to perform such a task in the future. The municipality receiving the grant often needs an administrator for the grant who will be responsible for reviewing bid documents, handling payroll, correspondence, and procurement.

The requester would like to apply for the position of grant administrator or , alternatively, the municipality may approach the requester to fill that role. This would be done with the approval of both the County Commission and the County Planning Commission since they would not consider such grant administration as being within the scope of his official responsibilities as County Planning Director.

Since services as grant administrator for a municipality would be outside the scope of the requester's official responsibilities, the grant administrator work would be provided under a separate employment contract between the requester and the municipality which would have to be approved by the granting agency. Neither the County Commission nor the County Planning commission would serve as the granting agency providing the grant monies to the municipality.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

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

The Ethics Act

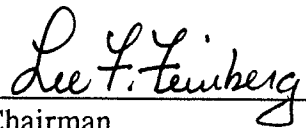
West Virginia Code §6B-2-5(d) prohibits public servants from being a party to or having an interest in the proceeds of any contract over which they may have authority or control. However, it is not necessary to determine what, if any, control the requester may have over the municipality's decision to enter into a contract with a grant administrator since this provision of the Ethics Act contains the explicit proviso that it should not be "construed to prevent or make unlawful the employment of any person with any governmental body."

The Commission notes that WV Code §6B-2-5(b)(1) prohibits public servants from using their position, or its prestige, for their own private gain or the gain of another. It would be a violation of this provision if the requester used his position as County Planning director to influence the municipality's selection of a grant administrator or to promote his personal interests in the position.

West Virginia 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.

The Commission finds that the requester's position as County Planning Director does not give him voice, influence or control over the municipality's decision to hire its own grant administrator. Therefore it would not be a violation of WV Code §61-10-15 for the requester to serve as grant administrator for a salary from the municipality. This opinion on WV Code §61-10-15 assumes that the requester makes no attempt to influence the municipality's selection of the grant administrator.


Chairman