

## **ADVISORY OPINION NO. 97-16**

**Issued on June 5, 1997 by the**

### **WEST VIRGINIA ETHICS COMMISSION**

#### **PUBLIC SERVANT SEEKING OPINION**

Member of a County Solid Waste Authority

#### **OPINION SOUGHT**

Is it a violation of the Ethics Act or WV Code 61-10-15 for a Member of a County Solid Waste Authority to bid on a state contract?

#### **FACTS RELIED UPON BY THE COMMISSION**

The requester is the Chairperson of a County Solid Waste Authority. Several years ago the Authority closed a landfill. It applied for and received assistance from a State Agency for services related to closure of the landfill.

In order to qualify for this state assistance, an Authority must merely apply and maintain its bond. The precise nature of services provided by the State Agency is left to the discretion and judgment of that Agency. Types of assistance that can be provided by the State Agency are testing of the site, water treatment, installation of storage tanks, regrading and grass seeding.

The State Agency installed leachate storage tanks at this landfill and now has determined that there is a need for hauling of the leachate from the site. The Agency has put out a request for bids to haul the leachate. The Agency and not the Solid Waste Authority, is solely responsible for selecting the vendor and overseeing performance of the contract.

The requester would like to submit a bid for the hauling services. He is concerned to establish whether he would violate the Ethics Act or WV Code 61-10-15 if he obtains the contract.

#### **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: Provided, 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.

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...district school officer...supervisor or superintendent, principal or teacher of public schools, 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**

The Ethics Act prohibits public servants from being a party to or having a financial interest in any contract which they have **direct** authority to award or over which they have control. The Ethics Commission finds that since the County Solid Waste Authority has no input in either the State Agency's determination of what services are necessary or selection of a vendor, the Authority members have no authority or control over the proposed contract.

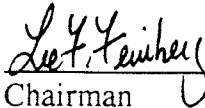
Therefore it would not be a violation of the Ethics Act for the requester to submit a bid and provide hauling services under the State Agency's contract.

#### **West Virginia Code 61-10-15**

West Virginia Code 61-10-15 prohibits designated county officials, including members of a County Solid Waste Authority, from having a direct or indirect personal financial interest in a public contract over which their public position gives them "voice, influence, or control."

In this case the Authority members have no voice in the State Agency's decisions as to the nature of services needed or the selection of vendors to provide those services. Under these facts, the Commission finds that the requester does not have voice, influence or control over the proposed contract.

Therefore it would not be a violation of WV Code 61-10-15 if the requester submitted a bid and provided services under a contract with a State Agency.

  
Chairman