

## **ADVISORY OPINION NO. 98-07**

**Issued on March 5, 1998 by the**

### **WEST VIRGINIA ETHICS COMMISSION**

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

Potential Member of a County Solid Waste Authority

#### **OPINION SOUGHT**

Is it a violation of the Ethics Act or WV Code 61-10-15 if a member of a County Solid Waste Authority purchases items sold to the public by a retail operation of the Authority?

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

A County Solid Waste Authority operates a recycling facility which offers items for sale to the public. There is a vacancy on the Authority and a resident is interested in applying for an appointment to fill the vacancy. However, this resident often purchases items from the Authority's recycling facility, repairs them, and then resells them to the public for a profit. She is concerned that a conflict of interest may exist if she becomes a member of the Authority.

#### **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... 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 Commission finds that the prohibitions against private interests in public contracts contained in both the Ethics Act and WV Code 61-10-15 do not apply to a public servant's purchase of a product or service at a fixed retail price from an agency's business which was established to sell at retail to the general public.

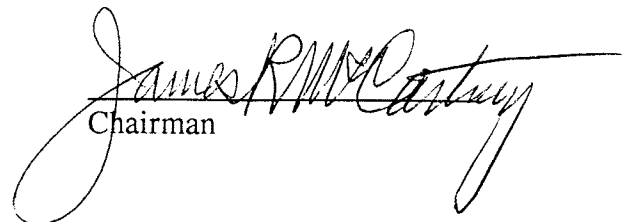
It seems clear that WV Code 61-10-15 is not intended to prohibit a member of a County Parks Authority from renting a park shelter to hold a family picnic or buying admission to the park pool or tennis courts. County officials should not be denied benefits available to the general public.

Similarly, the Ethics Act's prohibition against private interests in public contracts is not intended to prevent a State official or employee from buying an item at a State lodge gift shop or staying overnight at a State park cabin or hotel room.

Therefore, it would not be a violation of either the Ethics Act or WV Code 61-10-15 if the requester continues to purchase items at retail from the Authority's recycling facility while serving on the Authority, provided she does not use the influence of her position with the Authority to obtain a better price, terms of payment, or any other special considerations or treatment not available to the general public.

The requester is cautioned that she should not take part in Authority discussions or votes on matters which could directly and significantly affect the price or availability of items she routinely buys from its recycling facility. This would include, but not be limited to, any decisions determining what items will be offered for sale at the recycling facility, the price set for such items, and the possible discontinuation of the retail facility.

This opinion does not overrule the Commission's earlier advisory opinions that it would be a violation of WV Code 61-10-15 for county officials to have an interest in the purchase of agency property. See A.O. 93-49 which prohibits school board members from buying surplus school property at public auction and A.O. 96-02 which prohibits the sale of surplus school buses to a school board member's full-time employer. The purchases discussed in those opinions are distinguished by the Commission because they were not retail sales at a fixed price by an established agency retail outlet.

  
Chairman