

ADVISORY OPINION NO. 98-24

Issued On October 1, 1998 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **City Council Member** asks whether it would be a violation of the Ethics Act, if she and her husband received a loan from the City's Housing Department.

FACTS RELIED UPON BY THE COMMISSION

The City Housing Department provides low interest mortgages and housing rehabilitation loans to residents of the City with low and moderate income. The Council Member and her husband have applied for a low interest loan available through a program administered by the Department. They meet all the financial requirements established by the program's federal guidelines. The Council Member asks if her service on City Council makes her ineligible to receive the benefits of the City loan program to which she would otherwise be entitled.

The Director of the Department is appointed by the Mayor. The Department processes and approves loan applications and directly disburses the monies which are provided by federal funding. City Council approves the Department's overall budget, but does not approve individual loan applications.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) provides 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) provides in pertinent part that... no elected or appointed public official...or member of his or her immediate family...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...

ADVISORY OPINION

The Ethics Act prohibits public servants from having a personal financial interest in a public contract, purchase or sale which their public position gives them the authority to award or control. WV Code 6B-2-5(d) The Requester's position on City Council gives her the degree of control contemplated by this prohibition, but the Commission finds that the Legislature did not intend the prohibition to apply to this situation.

In A.O.98-07 the Ethics Commission ruled that it would not be a violation for a County Solid Waste Authority Board Member to purchase items from the Authority's business, which was established to sell at retail to the general public. In that opinion the Commission observed that WV Code 61-10-15, a similar prohibition,

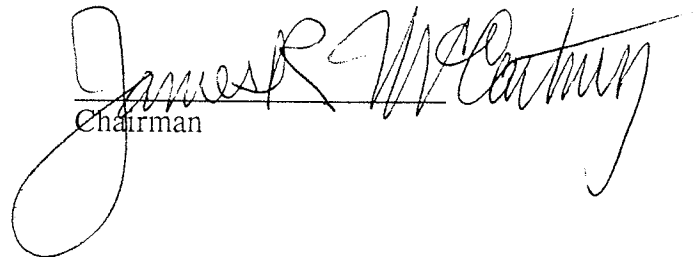
"is not intended to prohibit a member of a County Parks Authority from renting a park shelter to hold a family picnic or buying admission to the park pool or tennis courts. County officials should not be denied benefits available to the general public.

Similarly, the Ethics Act's prohibition against private interests in public contacts 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."

The Commission finds that the prohibition is not intended to deny the Council Member and her spouse the benefit of a loan program administered by the City's Housing Authority, simply because she serves on Council. Therefore, it would not be a violation of the Ethics Act for the Council Member and her spouse to obtain from the City's Housing Authority a low interest loan to which she is otherwise entitled.

The Council Member is cautioned, however, that it would be a violation of the Ethic Act's prohibition against the use of office for private gain, if she were to use her position on Council to influence the actions of the Housing Department to obtain preferential treatment, terms, conditions or other consideration not available to the general public.

This decision is expressly based upon, and limited to, the particular facts and circumstances of the Council Member's request. No other person should rely on this opinion without first consulting the Ethics Commission for guidance.


Chairman