

ADVISORY OPINION NO. 99-07

Issued On March 4, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Prosecuting Attorney** asks whether it would be a violation the Ethics Act, or WV Code 61-10-15, if the County Commission rented storage space in a building owned by the Prosecutor, his spouse and parents.

FACTS RELIED UPON BY THE COMMISSION

The Prosecutor, his wife and parents own an office building adjacent to the County Court House. Space in the building is routinely rented out for offices and storage. The County Commission needs file storage space and has asked the Prosecutor if he would rent space to the Commission at a rate equivalent to other storage facilities in the area.

The Prosecutor's Office is statutory counsel to the Commission, but the Commission retains a private attorney who does the majority of the Commission's legal work. The Prosecutor's involvement in the Commission's legal matters is limited and he has no input into the Commission's decisions on routine business matters.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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 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...

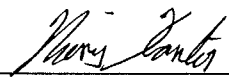
West Virginia Code Section 61-10-15 states in pertinent part that...It shall be unlawful for any... county or district officer...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

The **Ethics Act** contains a prohibition against public servants being a party to, or having a personal financial interest in a public contract which their public position gives them the authority to award or control. The Commission finds that the Prosecutor does not have the authority to award or control the County Commission's contracts and it would not be a violation of the Ethics Act for the Commission to rent storage space in the Prosecutor's building.

WV Code 61-10-15, is a criminal misdemeanor statute which contains a similar, but more comprehensive, public contract prohibition. This statute applies to county prosecutors and certain other county personnel. It prohibits the designated persons from having a personal financial interest, directly or indirectly, in public contracts, purchases and sales over which their public position gives them "voice, influence and control".

The Prosecutor's statutory responsibilities as counsel for the County Commission vest in him the degree of "voice, influence and control" over the contracts of the Commission contemplated by WV Code 61-10-15. Therefore, in spite of the fact that the County Commission uses a private attorney for most of its legal matters, the Commission finds that it would be a violation of WV Code 61-10-15 for the County Commission to lease the Prosecutor's property.



Chairman