

## **ADVISORY OPINION NO. 2003-07**

**Issued On May 1, 2003 By The**

### **WEST VIRGINIA ETHICS COMMISSION**

#### **OPINION SOUGHT**

A **County Farmland Protection Board Member** asks whether he may apply through the Board for inclusion of his farm in the Farmland Protection Program.

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

The County Farmland Protection Board was established under W. Va. Code § 8-24-72. At least three of the seven members must be farmers. The requester is a farmer and serves as Board President. The Board is authorized to enter into agreements with property owners restricting the use of land. These agreements must receive approval from the County Commission to become effective. The Board Member seeks to participate in a voluntary program that authorizes him to receive compensation for permanently surrendering his right to develop or use his land for non-agricultural purposes.

#### **CODE PROVISIONS RELIED UPON BY COMMISSION**

West Virginia Code 6B-2-5(d)(1) provides in pertinent part that...no...appointed public official...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, however,* 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.

WV Code 61-10-15 (a) states in part that ... It shall be unlawful for any ... member of any ... county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over which] he or she may have any voice, influence or control...

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##### **The Ethics Act**

The Ethics Act prohibits public servants from being a party to, or having more than a limited interest in, a public contract over which their public position gives them authority or control. WV Code 6B-2-5(d). Although members of a County Farmland Protection Board have direct authority and control over all Authority contracts, the final approval of any easement obtained from the Board Member under this voluntary program rests with the County Commission.

Nonetheless, the Board Member's financial interest in obtaining ultimate approval for inclusion of his property in the Farmland Protection Program requires that he recuse himself from the Board's discussion and vote on his application. The Ethics Commission has ruled that for the recusal to be effective, the public official must be physically absent from the room during the discussion and decision making process.

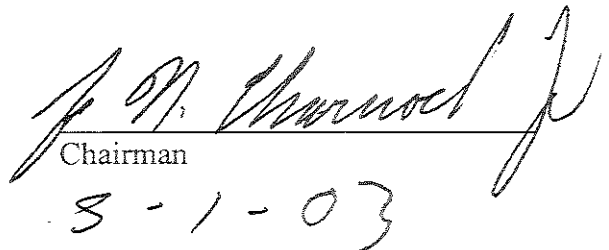
Therefore, it would not be a violation of the Ethics Act for a Board Member to participate in the farmland protection process through the Farmland Protection Board on which he serves, if the Board Member is recused from official consideration of his application.

#### **WV Code 61-10-15**

WV Code 61-10-15 is a criminal statute governing the activities of certain county personnel, including members of a Farmland Protection Board. It prohibits them from having a direct or indirect financial interest in a public contract over which their public position gives them control. Recusal from action in regard to a Board contract does not excuse compliance with the requirements of 61-10-15.

The Commission finds that participation in the Farmland Protection Program does not constitute the type of pecuniary interest contemplated by WV Code 61-10-15. A property owner who meets the specific criteria in the program is eligible to receive compensation for voluntarily surrendering his development rights.

Given this particular factual situation, the Commission rules that it would not be a violation of WV Code 61-10-15 for the Board Member's farm to be included in the Farmland Protection Program. The Commission notes that this decision is limited to the facts and circumstances of this particular case, and the decision may not be relied upon by others without having first consulted with and received written confirmation from the Ethics Commission.

  
Chairman  
8-1-03