

# TOWN OF BATH SPECIAL COUNCIL MEETING

Monday, June 27, 2022

1. CALL TO ORDER: @ 8:06am by Mayor
2. ROLL CALL: Scott Merki (X) Susan Webster (X) Chris Chapman (X) Rose Jackson (X) Elizabeth Skinner (X) Greg Forney (X) Rick Weber (A) Quorum present.
3. Transference of insurance agencies from CBIZ to WV RWR as presented at the Bath Council meeting of June 21, 2022:  
Discussion was held concerning the advantages of transferring the Town liability insurance coverage carried by Travelers and Workers Compensation coverage carried by Encova from CBIZ in Cumberland, MD to WV RWR in Berkeley Springs, WV. Consideration was also given to the opinion and stipulations submitted by the WV Ethics Commission. The question had arisen as to the possibility of a conflict of interest because the Broker of Record for WV RWR is Sean Forney who is a Morgan County Commissioner.  
The WV Ethics Commission's opinion (see attached) and direction is that the Town of Bath may have as it's insurance broker a sitting Morgan County Commissioner with certain stipulations that Council found to not be onerous.  
MOTION: To approve transferring the Town of Bath's General Liability and Workers Compensation insurances to the WV RWR Insurance Agency in Berkeley Springs, WV- Webster/Forney- Carried.
4. Copier/Printer review:  
Joel Tuttle, representative of the Document Solutions Company, attended telephonically to review with Council any questions or concerns they may have with the move to this company for printer/copier services. Discussion entailed the technical ability of the new system to handle the needs of the BSWW, BSPD and Town office, financial clarifications, machine availability and contingency plans. Council member's concerns were satisfied and there was concurrence to move forward with Document Solutions.
5. Adjournment by Common Consent.

Mayor

Scott E. Merki

Recorder

Julia Forney

ADVISORY OPINION NO. 93-20

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 3, 1993

GOVERNMENTAL BODY SEEKING OPINION

A County Commission Member

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Commission Member to have a pecuniary interest in the profits or benefits of a City contract?

FACTS RELIED UPON BY THE COMMISSION

The County is currently leasing a building to house the County Magistrates from the City Building Commission. This agreement provides that the County rent a portion of the first floor of the building and affords the County the option to purchase the office space at a reduced rate at the conclusion of the lease.

The second floor of this building has been empty for several years. Although the City has the opportunity to lease this space, the prospective tenant would require additional office space. To facilitate that effort, the City asked the County Commission to permit the prospective tenant to use the area occupied by the Magistrates. The County Commission agreed and moved the Magistrates to other, less expensive, property also owned by the City. The County Commission will continue its responsibilities and rights under the lease agreement, including its right to purchase the premises at the conclusion of the lease term.

The building will require some renovations in order to meet the needs of the new tenant. The City will pay the entire cost of such renovations, has advertised for bids, and will retain a certified engineer to oversee the renovation contract. The requestor, President of the County Commission and also a local building contractor, would like to bid on the City's renovation contract.

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...public official...or business with which he... is associated may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he...may have control...

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...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

In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that no provision of the Ethics Act per se prohibits a County Commissioner from having a pecuniary interest in the City's renovation contract.

West Virginia Code §6B-2-5(d)(1) prohibits a public official from having a pecuniary interest in the profits or benefits of any public contract over which he has direct authority or control. However, in this instance, the County Commission would merely act as the sub-lessor of part of the office space. All renovation work will be contracted and funded by the City. The requestor, as a County Commissioner, does not have direct authority or control over the letting of the City's contracts. Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for the County Commissioner to have a pecuniary interest in the profits or benefits of the City's renovation contract.

The Commission notes that WV Code §6B-2-5(b)(1) provides that a public official may not use his public office for his own private gain or for the private gain of another. Therefore, the requestor may not use his position on the County Commission to influence, obtain, increase, or promote his personal interests as an independent contractor.

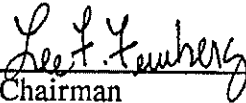
#### WV Code §61-10-15

The Commission previously determined that the County Commission Member does not have direct authority or control over the City's renovation contract. However, WV Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he may have voice, influence or control over the letting of such contract.

The role of the County Commission as the sub-lessor of the City's building would not give the County Commission President the degree of voice, influence or control contemplated by WV Code §61-10-15. Although this was a difficult issue to resolve, the Commission was ultimately persuaded by the degree of separation between any action of the requestor and the awarding of the contract.

Therefore, it would not be a violation of WV Code §61-10-15 for the County Commission President to have a pecuniary interest in the City's renovation contract provided that the contract does not arise out of any prearrangement between the requestor and any other party.

The Commission would note that any person acting in good faith reliance upon a written advisory opinion of the Commission is afforded an absolute defense to any criminal prosecution under West Virginia Code §61-10-15 for actions taken in good faith reliance upon such opinion.

  
Chairman