

ADVISORY OPINION NO. 96-12
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON APRIL 4, 1996

PUBLIC SERVANT SEEKING OPINION

School Principal

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 if a member of a County Board of Education receives payment for officiating athletic games in that County?

FACTS RELIED UPON BY THE COMMISSION

A Board member of a County School System is certified by the Secondary Schools Activities Commission as an athletic referee. When a school hosts a game, it is responsible for obtaining and paying the necessary referees. The referees are paid from local funds raised at the school by private sources such as the athletic boosters who hold raffles or operate the concessions stand during the games.

In the instant case, the principal delegates the selection of referees to the coach of the team, who is free to make a selection from a list of certified referees. That list includes the name of the School Board member since he is a certified referee.

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 prevent or make unlawful the employment of any person with any governmental body

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...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 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 there is no provision of the Ethics Act which would prohibit a member of a County Board of Education from being selected to referee athletic events at individual schools located in that County.

The Commission is sensitive to the appearance of potential use of influence by the school board member because of his position of authority within the school system. The opinion is therefore limited to the assumption that the board member does not communicate or comment in any way to the officials responsible for the selection of referees.

Pursuant to WV Code 6B-2-5(b)(1) a public official may not use his office or its resulting prestige for his own private gain or for the private gain of another. Therefore, the Board member may not use his position with the County Board of Education to promote, obtain, coerce or influence the decision of the school principal or coach in their selection of referees.

Public Contract

West Virginia Code 6B-2-5(d)(1) provides that a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. The requester is a member of the County Board of Education and as such he is responsible for the overall business affairs of the School System. However, the selection of a person to referee athletic events is made by the individual school principal and/or the school coach and the choice is made from a list of all certified referees. Further, the selected referees are paid from local funds raised at the school through private sources. The County Board of Education does not participate in the hiring decision and does not provide payment for referee services.

Further, WV Code 6B-2-5(d)(1) also provides that nothing contained within this section shall prohibit the employment of any person with any governmental body. Therefore, it would not be a violation of this subsection for a member of a County Board of Education to serve as a referee and receive payment for officiating athletic games in his County.

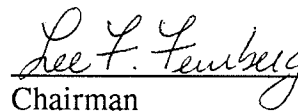
West Virginia Code 61-10-15

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract. Any person who violates this provision is guilty of a misdemeanor and subject to removal from office.

Several factors persuade the Commission that the school board member does not have the requisite voice, influence or control over this type of contract to incur liability under WV Code 61-10-15. First, the decision to hire referees is left to the discretion of the principal of the school who has, in turn, delegated the choice to the coach of the school's team. Further, there is no evidence of any attempt by the School Board member to influence the choice of a referee by either the principal or the team coach. Finally, the payment of the referees is not controlled by the Board of Education or anyone in the Board's central office. The payments are made by the individual school from local funds raised by the athletic boosters from concession sales or other fund-raising efforts.

Therefore, it would not be a violation of WV Code 61-10-15 for a member of a County School Board to be paid by a local school with that school's own athletic funds to referee athletic contests since he does not have voice, influence or control over the letting of the contracts between referees and individual schools.

Pursuant to WV Code 6B-2-3, any person acting in good faith reliance on an advisory opinion is immune from the sanctions of WV Code 61-10-15 and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon such opinion.


Chairman