

## ADVISORY OPINION NO. 98-20

Issued On September 3, 1998 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

A **County Board of Education Member** asks if it would be a violation of the Ethics Act for a Board Member to sell security systems to Board of Education employees.

#### FACTS RELIED UPON BY THE COMMISSION

The requester, a County Board of Education Member, sells home security systems and is in the process of being hired as an insurance and financial services representative. He would like to sell home security systems, insurance and financial services to Board employees. He explains that his membership on the Board does not give him direct management authority over Board employees.

#### PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(m) provides in pertinent part that... Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

- (A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or
- (B) The solicitation is limited to the posting of a notice in a communal work area; or
- (C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or
- (D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

#### ADVISORY OPINION

WV Code 6B-2-5(m) prohibits public officials and public employees from soliciting private business from subordinates who they have the authority to direct, supervise or control. While the requester believes that he has no **management** authority over Board employees, his position on the Board does give him the type of authority contemplated by the Act's prohibition against solicitation of subordinates. WV Code §18-5-1 provides specifically that each county school district shall be under the supervision and control of a County Board of Education and WV Code

§18-5-13, which sets out the general powers and duties of the County Boards, clearly establishes that Board members have the requisite authority.

The requester's service on the County Board of Education prohibits him from soliciting business from all Board employees or their spouses and it would be a violation for him to do so. This prohibition applies only to those employed within his county school system. It would not apply to those employed by other County Boards of Education.

The Commission notes that WV Code 6B-2-5(m) does contain several exceptions from the prohibition against soliciting business from subordinates. The requester would be entitled to conduct business with subordinates under the circumstances encompassed by that exemption, e.g. he could solicit business at the location his private business, if the subordinate had come there on his own initiative.

  
Chairman