

## **ADVISORY OPINION NO. 98-31**

**Issued On February 4, 1999 By The**

### **WEST VIRGINIA ETHICS COMMISSION**

#### **OPINION SOUGHT**

A **County Board of Education Member** asks whether it would be a violation of the Ethics Act or WV Code 61-10-15 for the County school system to buy crushed stone which is quarried from property in which he has an ownership interest.

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

The Board Member is one of ten relatives who own real estate from which a local business quarries stone. He is paid a royalty of one and one half cents per ton of material mined and removed from the property.

The business sells the County school system a variety of building materials, including crushed stone taken from the property it leases from the Board Member and his relatives. In the fiscal year ended June 30, 1998, the school system's purchases of stone, concrete, block and miscellaneous other materials from the business totaled about \$2,700. Payments to the business through mid-December 1998, for the fiscal year ending June 30, 1999 were about \$2,300. Even if all the school system's purchases from the business had been for crushed stone, the resulting royalties to the Board Member for the last fiscal year would be well under \$5.

#### **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 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:...

West Virginia Code Section 61-10-15 states in pertinent part that...It shall be unlawful for any member of any county board...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**

Both the Ethics Act and WV Code 61-10-15 prohibit public servants from having a personal financial interest in a public contract, purchase or sale over which their public position gives them control. Both prohibit county school board members, who clearly have control over their school systems' financial transactions, from having a personal financial interest in such transactions.

However, the West Virginia Supreme Court of Appeals held, in Jordan v. McCourt, 62 S.E. 2d 555 (1950), that there are certain instances where the pecuniary interest in a public contract is so small as to be deemed *de minimis* and although a technical violation of WV Code 61-10-15 may exist, it is not the type of pecuniary interest which triggers the sanctions of WV Code 61-10-15.

In this case the Commission considers the Board Member's royalty interest of less than \$5 from the sales of crushed stone to the County school system to be *de minimis*. It is not a violation of either the Ethics Act or WV Code 61-10-15 for the school system to purchase crushed stone from the business, provided his interest remains *de minimis*.

The Commission's decision is based on the particular facts and circumstances of this request and may not be relied upon by others. The Commission can not establish a formula to predict when an interest is *de minimis*, but must decide such questions on a case by case basis.

Shaun Williams  
Vice Chairman