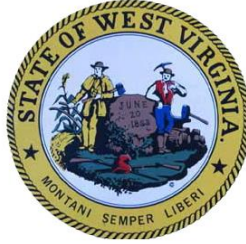


West Virginia Ethics Commission



W.Va. Code § 61-10-15 Governing County Officials and County Schools

The Ethics Commission has the authority to interpret a criminal misdemeanor statute that applies only to certain county-level employees and officials. The statute, at W.Va. Code § 61-10-15, imposes stricter prohibitions than the Ethics Act.

The Ethics Commission has no power to enforce the provision, which must be prosecuted by county prosecuting attorneys or special prosecutors.

Who is subject to the statute

The statute applies to county officers, including all elected and appointed county officials. Examples include county commissioners, county clerks, appointed members of Public Service Districts (PSD) and appointed members of county parks and recreation boards. It also applies to county school board members and certain county school employees.

What the statute prohibits

It strictly prohibits, with limited exceptions, county officials and persons in county school systems from having an interest, direct or indirect, in public contracts over which they exercise voice, influence or control.

“Voice, influence or control” defined

The phrase “voice, influence or control” over a public contract is interpreted broadly and includes the power to approve an agency’s budget or to appoint its board members.

The West Virginia Supreme Court of Appeals ruled in State v. Neary, 179 W.Va. 115, 365 S.E.2d 395 (1987), that the powers which the county commission exercised over the PSD, including the authority to appoint and remove members of the PSD, constituted the exercise of voice, influence or control over PSD public contracts; hence, a member of a county commission could not privately contract with the local PSD. The Court further held

that the law does not require the showing of an actual exercise of influence, but that a violation of the statute can be proven by a showing that the public official became or remained interested in the proceeds of a contract, in which, by virtue of his office, he may have voice, influence or control. A county official may not avoid the prohibitions of the statute by simply recusing him or herself from the selection process.

Exercising control over a contract also includes drafting bid specifications or requests for proposals, recommending the selection of a vendor, or approving the method or manner of payment to a vendor.

For more information on what constitutes “control,” refer to the Ethics Commission’s Guideline entitled “Prohibited Interest in a Public Contract.”

Examples of prohibited and permissible contracts

Some examples of prohibited contracts are:

- A county prosecutor may not contract with a local extension service agency since his prosecutorial duties give him voice, influence and control over the agency’s contracts (A.O. 2009-05);
- An appointed member of a solid waste authority (“SWA”) may only be considered for employment by the SWA if he/she first resigns his/her position as an SWA member and all qualified candidates are given equal consideration (A.O. 99-31), and
- A county commission may not purchase property from an appointed member of the county building commission (A.O. 2012-16).

Some examples of permissible contracts are:

- A board of education member may bid on projects proposed by a behavioral health center in which the board’s involvement is limited to making annual contributions of \$15,000 to the center’s \$10,000,000 budget. The board of education did not appoint the center’s directors and had no supervision or oversight of the behavioral health center. The Ethics Commission concluded that the board of education member did not have voice, influence or control over the center. (A.O. 2001-28)
- A public service district board member may accept \$1.00 from the board for the member’s easements and land because the transaction amount is *de minimis*. The board member's pecuniary interests do not trigger the prohibitions in W.Va. Code § 61-10-15. (A.O. 2016-06)
- A county building commissioner may purchase and develop property owned by a county urban renewal authority because he or she does not exercise any voice, influence or control over the county urban renewal authority. (A.O. 2015-16)

The statute's anti-nepotism provisions

W.Va. Code § 61-10-15 prohibits the employment of a county official's spouse or a person dependent upon or cohabitating with the county official, although there are some limited exceptions to this prohibition.

For example, the statute permits the employment by a county of an elected official's spouse as long as they were not married or engaged at the time of the spouse's hiring. The statute also allows the employment of a county commissioner's wife at a county-owned hospital.

The Ethics Commission held in Advisory Opinion 2013-08 that although a county prosecutor has voice, influence, and control over county board of education contracts, his spouse may work as a school nurse in the same county. The A.O. noted that W.Va. Code § 61-10-15 only authorizes employment in this situation if the spouse is employed in one of the following "covered" positions: (1) principal; (2) teacher; or (3) auxiliary or service employee. It found the spouse to be a "professional educator"/teacher who served the school system by providing general health care services to children in the county school system.

Exceptions to § 61-10-15

There are limited exceptions to the prohibitions in this statute. For example, the restrictions do not apply to persons who have a pecuniary interest in a bank within the county which serves as a depository for county funds, or any person who has an interest in a public utility which is subject to regulation by the Public Service Commission. The statute also allows, with strict limitations, a county official to be a salaried employee of a county vendor.

Exemptions

County officials or school boards adversely affected by the prohibitions in this section may seek a Contract Exemption from the Ethics Commission. Contract Exemptions are granted upon proof that the prohibition will result in excessive cost, undue hardship or otherwise substantially interfere with the operation of a county agency or county school system. For example, in Contract Exemption 2010-07, a Board of Education was granted an exemption to purchase property in which an assistant prosecuting attorney had an ownership interest.

Another example is Contract Exemption 2016-05, in which the Ethics Commission granted a sheriff's department an exemption to purchase two emergency lighting equipment units for cruisers from a deputy who exercised influence and control over decisions regarding the lighting units. The Commission held that it would result in excessive cost and undue hardship to prohibit the sheriff's department from purchasing these two units from the deputy.

For more information about obtaining a Contract Exemption, refer to the Guideline entitled "How to Seek a Contract Exemption."

Penalties for violating § 61-10-15

Persons found to have violated the statute are guilty of a criminal misdemeanor and, upon conviction, shall be fined from \$50 to \$500 or confined in jail not more than one year, or fined and convicted. Any person convicted also must be removed from office. Teachers, principals, supervisors or superintendents who are convicted also must have their teaching certifications revoked.

Advisory Opinions interpreting W. Va. Code § 61-10-15 may be viewed on the Ethics Commission's website at www.ethics.wv.gov.

West Virginia Ethics Commission

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