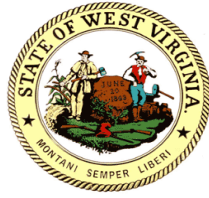


West Virginia Ethics Commission Guideline



Prohibited County Contracts with County Officials and County Schools Employees

The Ethics Commission has the authority to interpret a criminal misdemeanor statute that applies to county officials and some county school employees. 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 in circuit court by a county prosecuting attorney or special prosecutor. *Advisory Opinions interpreting W. Va. Code § 61-10-15 may be viewed on the Ethics Commission's website at ethics.wv.gov.*

Who is subject to the statute?

The statute applies to all elected and appointed county officials, including county commissioners, county clerks, public service district members, and county parks and recreation board members. It also applies to the following school employees and officials: district school officers, board of education secretaries, supervisors, superintendents, principals, and teachers.

What does the statute prohibit?

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

What is "voice, influence, or control?"

The phrase "voice, influence, or control" over a contract is interpreted broadly and includes the *power* to approve an agency's aggregate budget or to appoint its board members.

For example, in [State v. Neary](#), 179 W. Va. 115, 365 S.E.2d 395 (1987), the Court found that a county commission's power to appoint and remove public service district ("PSD") members constitutes voice, influence, or control over PSD contracts; hence, a county commissioner could not contract with the PSD. The Court further held that the law does not require the showing of actual exercise of influence, but only that the public official *may* have voice, influence, or control. A county official may not avoid the prohibitions of the statute by simply recusing himself or herself from the selection process.

Exercising voice, influence, or 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.

Examples of prohibited contracts

- A county prosecutor may not rent storage space to a WVU local extension service agency that receives excess levy funds from the county commission because a prosecutor's duties include advising a county commission. ([AO 2009-05](#))
- An appointed member of a county board of health may only be considered for employment by the board of health if he/she first resigns his/her position as a board of health member and all qualified candidates are given equal consideration. ([AO 1999-31](#))
- A county commission may not appoint one of its own members to a county emergency services authority when that member would receive more than nominal compensation for serving on the authority. Authority members receive \$200 per meeting, which the Ethics Commission found to be more than nominal. The county commission also has the authority to set the compensation of its appointed authority members. The Opinion does not apply to situations where the law expressly requires a county commissioner to serve on a board. ([AO 2019-07](#))

Examples of permitted contracts

- A board of education ("BOE") member would not have sufficient voice, influence, or control over a WVU local extension service agency's contracts given the BOE's limited appropriations to the agency. ([AO 2018-05](#))
- A public service district ("PSD") board member may sell land easements to the PSD because the transaction amount is de minimis. ([AO 2016-06](#))
- A county building commission member may purchase property from the county urban renewal authority ("CURA") because he or she does not exercise any voice, influence, or control over the CURA's contracts. ([AO 2015-16](#))
- A county commissioner may work for a nonprofit organization to which the county commission appropriated funds constituting *less than seven percent* of the nonprofit's fiscal year revenues. County funds may not be used to directly fund the county commissioner's employment position with the nonprofit. ([AO 2023-12](#))

Exceptions

There are limited exceptions to the prohibitions in this statute. For example, the restrictions do not apply to (1) persons who have a pecuniary interest in a bank within the county that serves as a depository for county funds, (2) any person who has an interest in a public utility that is subject to regulation by the Public Service Commission, or (3) contracts for materials purchased through a competitive bid process in compliance with [W. Va. Code § 61-10-15\(n\)](#). A county official and others subject to § 61-10-15 may also be a salaried employee of a county vendor under certain conditions.

Nepotism

[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, unless the employment is permitted by one of the statute's enumerated exceptions.

For example, the statute permits an elected official to marry an employee in his office if they were not engaged at the time of the spouse's hiring by that office. The statute also allows the employment of a county commissioner's spouse at a county-owned hospital.

The statute also permits a county official's spouse to be employed as a principal, teacher, or auxiliary or service employee in the public schools of any county. The Ethics Commission held in [AO 2013-08](#) that although a county prosecutor has voice, influence, or control over county board of education contracts, his spouse may work as a school nurse in the same county.

Exemptions

County agencies adversely affected by the prohibitions in this statute may seek a Contract Exemption ("CE") 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. For example, in [CE 2010-07](#), a board of education ("BOE") was granted an exemption to purchase property from a prosecuting attorney. The Commission found that prohibiting the BOE from purchasing the property would result in undue hardship to the BOE due to the property's location and other attributes that the other available properties lacked.

Another example is [CE 2016-05](#), in which the Ethics Commission granted a sheriff's department an exemption to purchase emergency lighting equipment for cruisers from a deputy who exercised influence and control over decisions regarding the lighting equipment. The Commission held that it would result in excessive cost and undue hardship to require the sheriff's department to pay double the cost to purchase the units from its previous vendor.

For more information about obtaining a Contract Exemption, refer to the Guideline entitled ["How to Seek a Contract Exemption."](#)

Penalties

Penalties for violating this criminal misdemeanor statute include a fine between \$50 and \$500, jail for up to one year, removal from public office, and revocation of a teaching certification.

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