

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 officials and certain 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 by county prosecuting attorneys or special prosecutors.

Who is subject to the statute

The statute applies to all elected and appointed county officials. Examples include county commissioners, county clerks, appointed members of Public Service Districts and appointed members of county parks and recreation boards. It also applies to the following school employees and officials: “district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer.”

What the statute prohibits

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

“Voice, influence or control” defined

The phrase “voice, influence or control” over a 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 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 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 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 or 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)
- A county commissioner's company may not become a subcontractor for supplies and materials for county parks and recreation commission and public service district projects. (A.O. 2017-02)
- 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 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. (A.O. 2019-07)

Some examples of permissible contracts are:

- A board of education member would not have sufficient voice, influence, or control over her employment contract with WVU Extension Service given the board's limited appropriations to WVU Extension Service and the member's lack of power to make appointments to her local extension service committee. (A.O. 2018-05)
- A public service district ("PSD") board member may sell his easements and land to the PSD because the transaction amount is *de minimis*. (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 authority. (A.O. 2015-16)

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.

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

For example, the statute permits the employment by a county of an elected official's spouse if 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 spouse at a county-owned hospital.

The statute also permits a 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 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. 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.

Exemptions

County agencies 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 board. 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. The Commission found that prohibiting the Board from purchasing the property would result in undue hardship to the Board due to the property's central location and other attributes that other considered properties were lacking.

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 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 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 ethics.wv.gov.

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210 BROOKS STREET, SUITE 300
CHARLESTON, WV 25301-1804
(304) 558-0664 - FAX (304) 558-2169
ethics@wv.gov ethics.wv.gov

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