

ADVISORY OPINION NO. 98-08

Issued on April 2, 1998 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

School Board Member

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 if a member of a School Board votes on a modification of that Board's policy providing supplemental payments to retired teachers?

FACTS RELIED UPON BY THE COMMISSION

The requester is a member of a County School Board and also a retired teacher from that school system. Many years ago the County Board of Education established a policy providing for a small monthly stipend to retired teachers based upon their years of service in that County. Several years ago the policy was amended so that it would not apply to new hires.

The School Board is now considering a proposal to increase the stipend. The requester, as a retired teacher, would receive the increase payment along with other retired teachers. He is concerned to establish whether the Ethics Act or WV Code 61-10-15 would be violated if he voted on the proposal.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...district school officer...supervisor or superintendent, principal or teacher of public schools, or any member of any other county or district board, or for any county or district officer 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.

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West Virginia Code 61-10-15

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract. Members of a board of education have inescapable voice, influence and control over the contracts of the county board on which they serve.

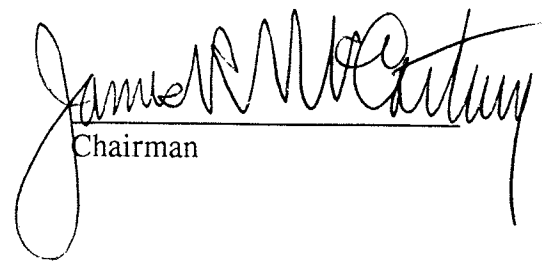
However, in this case the decision of the County School Board to pay its retired teachers a supplemental stipend is not a "contract" as that term is used in WV Code 61-10-15. It is not a payment required by law and may be altered or terminated upon a unilateral vote by the Board.

Therefore, since the stipend is not a contract, the Commission finds that neither the requester's current interest in the present stipend nor any interest in a subsequent increase in the stipend would violate WV Code 61-10-15.

The Ethics Act

No provision of the Ethics Act would prohibit the requester from receiving the benefit of an increased stipend even if he participates in a Board vote to raise the stipend.

The Commission's Legislative Rules on Voting, 158 CSR series 9, specifically provide that public servants may vote on a matters that effect them personally if they are effected only as a member of, and to no greater extent than any other member of, a profession, occupation or class. In this case the requester would be effected the same as all other retired teachers.


Chairman