

ADVISORY OPINION NO. 98-23

Issued On October 1, 1998 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County School Superintendent** asks whether it would be a violation of the Ethics Act or WV Code 61-10-15 for her to receive an honorarium for serving on the curriculum advisory board of a private publisher which contracts with her County Board of Education.

FACTS RELIED UPON BY THE COMMISSION

The Superintendent has been selected to serve on the curriculum advisory board of a private publishing company which currently contracts with the County Board of Education to provide math and phonics textbooks. The advisory board is comprised of eight educators from across the country, each of whom evaluates curriculum as part of their official duties.

The advisory board will assist the publishing company in setting standards for the development of curriculum programs that may be produced and evaluate program materials as they are developed. Advisory board members are expected to serve one year terms during which they will attend not less than two, nor more than four, meetings. The publishing company will provide each advisory board member with a \$750 "honorarium" plus expenses for each meeting attended.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d) states 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 Legislative Rule **158-7-2 (Honorarium)** 2.1 For the purposes of this section, the term "honorarium" means payment given in recognition of published works, appearances, speeches and presentations which is not intended as consideration for the value of such services. These payments are not legally or traditionally required such as in an employment contract.

West Virginia Code Section 61-10-15 states in pertinent part that ... It shall be unlawful for any superintendent of public schools ... 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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The Ethics Act says that public servants may not have a personal financial interest in a contract, purchase or sale which their public position gives them the authority to award or control. WV Code 61-10-15 prohibits certain county personnel, including school superintendents, from having a personal financial interest in a contract, purchase or sale over which their public positions gives them "voice, influence or control".

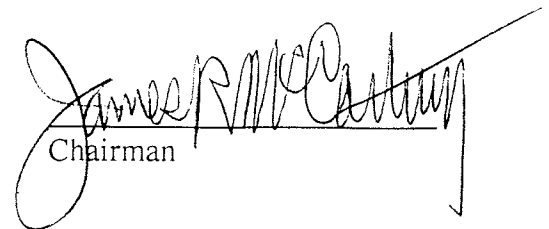
The Ethic Act's prohibition extends to the public servant's spouse and a business in which either of them have an ownership interest of more than ten per cent. Thus, public servants, their spouses and businesses in which they have an ownership interest of more than ten per cent are prohibited from having an interest in an agency contract or sale which the public servant has the authority to award or control. The prohibition does not extend to businesses by which either is employed.

The West Virginia Supreme Court has held that the prohibition of WV Code 61-10-15 does extend to businesses by which public servants and their spouses are employed, whether full-time or part-time. Thus, the designated county personnel, their spouses and the businesses in which they have an ownership interest, **or by which they are employed**, are prohibited from having an interest in an agency contract or sale over which the public servant has voice, influence or control.

If, by virtue of accepting a \$750 "honorarium" for her services on the advisory board, the requester becomes a part-time employee of the publishing company, then her service on the board would be a violation of 61-10-15. "Honorarium" is defined by the Ethics Commission's legislative rules as "... payment given in recognition of published works, appearances, speeches and presentations which is not intended as consideration for the value of such services. These payments are not legally or traditionally required such as in an employment contract."

The Commission finds that the acceptance of the honorarium from the private sector, for profit company would constitute the creation of a quasi-employment relationship between the publishing company and the advisory board members, who are in effect serving as compensated consultants. It would be a violation of WV Code 61-10-15 to accept the honorarium offered by the publishing company, which is a School Board vendor.

The Commission also notes its concern that the Superintendent's service on the publisher's advisory board may appear to compromise her impartiality and suggest the possibility of the publisher receiving unfair advantage over its competitors.


Chairman