

ADVISORY OPINION NO. 2000-12

Issued On July 6, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Regional Airport Authority** asks if it would be a violation for the Authority to purchase equipment from a business by which one of the Authority members is employed part-time.

FACTS RELIED UPON BY THE COMMISSION

West Virginia law provides for the creation of both county airport authorities and regional airport authorities. County authorities are established by the county commission. Regional authorities, comprised of one or more counties joined with one or more municipalities are public corporations governed by representatives appointed by the entities they represent.

The Regional Authority has advertised for bids for snow removal equipment for the airport. Ninety per cent of the purchase price will be funded by the Federal Aviation Authority (FAA), which must approve the Authority's award of the contract. The WV Aeronautics Commission and/or the Regional Authority will fund the balance. One of the bids received by the Authority comes from a business by which an Authority member is employed part-time.

The Authority represents that because of his association with one of the bidders, the member will be recused from "any and all discussions, recommendations and/or decisions concerning the purchase" of the equipment. The Authority asks whether the award may be made to the member's part-time employer, if it is found to have the lowest bid, and the bid is approved by both the Authority's consulting engineering firm and the FAA.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or 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 ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control ...

WV Code 61-10-15 states in part that ... It shall be unlawful for any member ... of any ... county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such member he may have any voice, influence or control ...

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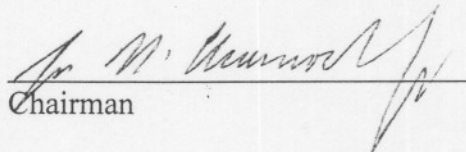
Both the Ethics Act and WV Code 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract, purchase or sale over which their public position gives them control.

WV Code 61-10-15 applies only to county personnel, including the members of county or district boards and county or district officers. The Commission finds that while the members of a county airport authority are clearly subject to this provision, those who serve on regional airport authorities are not. This follows the Commission's decision in AO 99-03 that the members of a Regional Planning and Development Council were not subject to WV Code 61-10-15.

The Ethics Act's prohibition against private interests in public contracts, WV Code 6B-2-5(d), applies to public servants, their spouses and businesses with which they or their spouses have an ownership interest of more than 10%. Unlike WV Code 61-10-15, the Ethics Act's prohibition does not apply to a business by which a public servant is employed, unless the employee also has an ownership interest in excess of 10%.

Lacking an ownership interest of more than 10%, the Authority member's employment by the business does not prevent the Authority from considering his employer's bid. However, the Commission has held that employees have a pecuniary interest in the business contracts of their employers and this interest is sufficient to require the Authority member's recusal from the Authority's consideration and vote on the snow removal equipment contract.

The Commission's legislative rules on voting provide that for a public servant's recusal to be effective, he must excuse himself from participating in the discussion and decision-making process by fully disclosing his interest, physically removing himself from the room during discussion of the matter and taking no part in voting on it.


Chairman