

## ADVISORY OPINION NO. 2000-13

Issued On July 6, 2000 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

A **County Board of Education Member** asks whether it is a violation for the Board to use natural gas supplied by a RESA through lines owned by his employer.

#### FACTS RELIED UPON BY THE COMMISSION

The Board buys its natural gas under a contract between a natural gas company and the Regional Educational Service Agency [ RESA ] to which the Board belongs. The gas is transported to the Board's schools through a pipeline system owned by a company by which the Member is employed. Several gas companies could provide natural gas to the Board, but the Member's employer "is the only gas company in the area that has main lines to all of the school structures" in the county. The Member's employer is paid a transportation fee by the Board.

#### 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 ...

#### ADVISORY OPINION

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.

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%. The Ethics Act's prohibition does not apply to a business by which a public servant is employed, unless the employee or the employee's spouse also has an ownership interest in excess of 10%.

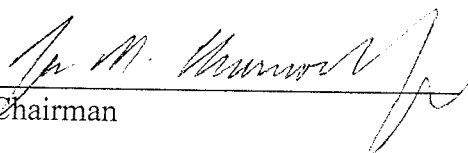
While the Member's employment is not sufficient to trigger the Ethics Act prohibition against a contract between the Board and a business by which the Member is employed, it is sufficient to require that the Member be recused from official action on the Board's discussion and vote on matters affecting his employer.

Unlike the Ethics Act, WV Code 61-10-15 does apply to businesses by which public servants are employed, even if they have no ownership interest in the business which employs them. In most situations, it would be a violation for a school board to contract with the employer of one of its members.

WV Code 61-10-15 prohibits public servants from having personal interests directly, or indirectly through their employers, in public contracts over which they have "voice, influence or control". In this situation the Board does not seem to have any control over the selection of a company to transport the needed natural gas. The Member's employer is the only source of transportation - no alternative exists to the use of the main lines owned by his employer.

The WV Supreme Court of Appeals dealt with a similar situation in *Dials v. Blair*, 111 S.E.2d 17 ( 1959 ) where a county school system purchased water from a company in which a board member had an ownership interest. The Court ruled that it was not a violation of WV Code 61-10-15 for a county board of education to purchase water from the company where water service could not be obtained from any source other than water companies in which a member of the board had an ownership interest.

The Commission rules that it would not be a violation for the Board to purchase gas transported through lines owned by the Member's employer because it is the sole source of that service available to the Board.

  
Chairman