

ADVISORY OPINION NO. 2000-14

Issued On July 6, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education** asks whether it is a violation for the Board to hire the spouse of the Superintendent of the county school system as a part-time football coach.

FACTS RELIED UPON BY THE COMMISSION

The Board asks if the Superintendent's spouse may be considered for an extracurricular coaching assignment. It would not be a full-time position and her spouse, though certified to teach, would not be employed by the Board for any other purpose, including as a teacher.

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:

Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body:

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: Provided, however, That nothing herein shall be construed to prevent or make unlawful the employment of the spouse of any such member, officer, secretary, supervisor, superintendent, principal or teacher as principal or teacher, auxiliary or service employee in the public schools of any county

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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.

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%. This prohibition contains a proviso which says that it is not intended to apply to "the employment of any person with any governmental body".

It would not be a violation of the Ethics Act's prohibition against private interests in public contracts for the Superintendent's spouse to be employed part-time as a coach by the Board.

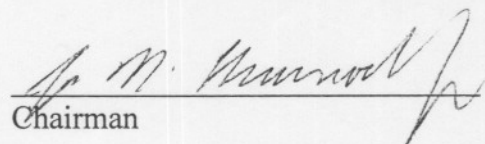
WV Code 61-10-15 provides that it is a criminal violation for certain county personnel, including the Superintendent of schools, to have a direct or indirect personal financial interest in a public contract over which their public position gives them "voice, influence or control".

Although this prohibition does include employment contracts, the statute specifically provides that it will not apply to the spouse of a superintendent who is employed by the Board as "a principal, or teacher, auxiliary or service employee."

The employment of the Superintendent's spouse as a part-time football coach would not violate WV Code 61-10-15, if that position falls within one of the exempt categories listed above. If it is to be included, it must be as "teacher" as it clearly does not fall into the other three.

Nothing in WV Code 61-10-15 defines "teacher". The general provisions of the WV Code dealing with School Personnel define "Classroom teacher" as "The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his or her time in this capacity." WV Code 18A-1-1

The Commission finds that "teacher" as that term is used in the proviso does not include part-time athletic coaches and it would be a violation of WV Code 61-10-15 for the Board to hire the Superintendent's spouse as a part-time football coach.


Chairman