

ADVISORY OPINION NO. 2000-16

Issued On August 3, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education Member** asks whether the Board may continue a contract with him for the maintenance of a TV satellite system he installed before his election to the Board.

FACTS RELIED UPON BY THE COMMISSION

Prior to his election to the Board, the Member contracted with the County's high school to install and maintain a TV satellite system. He owns and operates the only satellite installation and repair service in the area and had submitted a proposal at the request of the school's Principal when there had been no response to the school's advertisements for bids for the work.

The cost of the system's installation and maintenance were covered by a State grant and the State wanted a long term service contract. The contract, entered into in September 1999, provided that he would maintain the system for a period of five years for a total cost of \$400 per year.

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 prohibit public servants from being a party to, or having a financial interest in, a public contract, purchase or sale which their public position gives them authority to award or control. WV Code 61-10-15 is a criminal misdemeanor statute which applies only to certain county personnel, including county school board members.

These provisions are designed to prevent both actual misconduct in awarding public contracts and the appearance of impropriety inherent in public servants awarding public contracts to themselves.

These provisions steer public servants away from situations where they might need to consider their own financial interests in awarding agency contracts. Both would prevent the Board from entering into a service contract with the Member, now that he is on the Board.

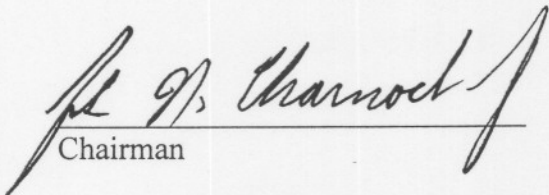
However, the Commission has recognized instances in which agencies may continue to do business under the terms of a contract in which an agency member has an otherwise prohibited personal financial interest, if the contract was OK when entered into - where, for example: (1) the public servant had no control over the contract at the time of its execution and (2) the public servant's interest in the contract arose after the contract was entered into.

The Commission first dealt with this issue in A.O. 90-19, under an earlier version of WV Code 6B-2-5(d) and before the Commission was authorized by the Legislature to advise public servants about the provision of WV Code 61-10-15. In that case, the Commission ruled that the school system could continue to do business under a contract in which an agency employee had a prohibited interest, because the contract was entered into prior to the effective date of the prohibition.

In A.O. 91-66 the Commission ruled that it would not be a violation for a County Commission to pay for gasoline purchased under a contract between the County and a business in which a County Commissioner had an ownership interest, since the contract was entered into before the County Commissioner's election to office. The Commission ruled that he "did not have any voice, influence, authority or control over the awarding or letting of that particular contract."

In A.O. 96-49 the Commission dealt with a school board's contract with a publishing company to supply specific text books at a fixed price during the years from 1993 through 1999. After the contract was entered into, the spouse of the superintendent went to work for the publishing company. The Commission ruled that it would not be a violation of WV Code 61-10-15 for the Board to continue to purchase books during the balance of the term of the contract, since neither the superintendent nor his spouse had an interest in the contract at the time it was entered into.

In this case, the Board entered into the service contract before the Member's election to the Board. The Member held no public position which gave him influence over the Board's award of contracts. The Commission therefore rules that it would not be a violation of WV Code 61-10-15 or the Ethics Act for the Board to continue the Member's existing service contract for the balance of its five year term, so long as there is no modification of its terms and conditions.


Chairman