

ADVISORY OPINION NO. 2000-24

Issued On September 7, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Board of Education asks if a vocational teacher may purchase automobile parts from a business where a Board Member is employed.

FACTS RELIED UPON BY THE COMMISSION

One of the vocational programs operated by the County Board of Education charges a shop fee to members of the general public who bring in their vehicles for students to repair. The money from those fees is placed in a fund upon which the vocational teacher draws to purchase parts and supplies for the shop. No state or local tax money is included in this fund. In the past, the teacher has purchased certain parts for the auto shop program from a local automobile dealer. An employee of the dealer was recently elected to the County Board of Education.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b)(1) states in pertinent part: A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

W. Va. Code § 6B-2-5(d)(1) 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. . . .

W. Va. Code § 61-10-15 states in pertinent part: It shall be unlawful for any member of a county commission . . . or any member of any other county or district board or for any county or district officer 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.

ADVISORY OPINION

Both the Ethics Act and W. Va. Code § 61-10-15 prohibit public servants from having a direct or indirect financial interest in a public contract, purchase or sale over which their public positions give them control. W. Va. Code § 61-10-15 is a criminal misdemeanor statute which applies only to certain county personnel, including the members of county Boards of Education.

W. Va. Code § 6B-2-5(d)(1) provides that a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. Any member of a Board of Education has responsibility for the overall business affairs of the county school system. However, the determination of where to purchase parts for the auto shop program has been delegated to a vocational teacher who makes the purchase with money raised from private sources. The Board Members are not involved in the decision to purchase parts from a particular source and are not required to approve payments for these supplies.

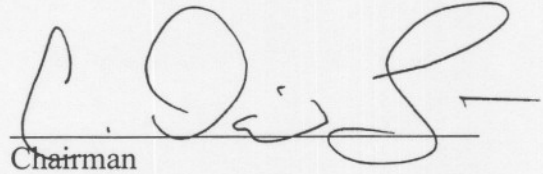
Pursuant to W. Va. Code § 6B-2-5(b)(1) a public official may not use his office or its resulting prestige for his own private gain or the private gain of another. Therefore, the Board Member may not use his position with the County Board of Education to promote, obtain, coerce, or to otherwise influence the decision of the vocational teacher on where to purchase auto parts and supplies.

W. Va. Code § 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract. The Commission has previously concluded that this prohibition does not apply where the board member does not have voice, influence or control over the funds being expended.

In A.O. 96-12 the Commission ruled that a coach could hire a board member to referee an athletic event using local school funds, rather than Board funds. Likewise, in A.O. 96-44 the Commission determined that a school boosters organization could purchase a storage building from a board member using funds raised by that organization. Similarly, in A.O. 2000-01 the Commission found that W. Va. Code § 61-10-15 does not apply to purchases made by teachers with proceeds from fund-raising activities and school vending machine sales, because the Board does not control the expenditure of such funds.

The situation presented in this request is analogous to these previous opinions. The Board Member who has a financial interest in the contracts of his employer is not involved in the purchase decision, and the employee making the purchases is not spending public funds controlled by the Board. Therefore, it would not be a violation of W. Va. Code § 61-10-15 for a vocational teacher to purchase parts and supplies for the auto shop program from a local automobile dealership where a Board Member is employed, so long as no funds controlled by the Board of Education are being spent.

Pursuant to W. Va. Code § 6B-2-3, any person acting in good faith reliance on an advisory opinion is immune from the sanctions of W. Va. Code § 61-10-15, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon such opinion.



Chairman