

COPY

ADVISORY OPINION NO. 2001-08

Issued On March 1, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County School Speech Pathologist asks if he may contract with the school board to provide speech therapy services to students after his normal work day?

FACTS RELIED UPON BY THE COMMISSION

Students with speech and language deficiencies are eligible for therapy provided by public school speech therapists. The Pathologist is a speech therapist whose regular duties include testing students, from the schools to which he is assigned, for speech and language deficiencies and providing appropriate therapy to the students from those schools.

Education policy limits the caseload for a full-time public school speech therapist to 50 students. The Pathologist asks if he may, when his case load reaches 50, contract with the county to provide therapy on his own time for students who are entitled to therapy but cannot be handled by him as a part of his regular job.

CODE PROVISIONS RELIED UPON BY COMMISSION

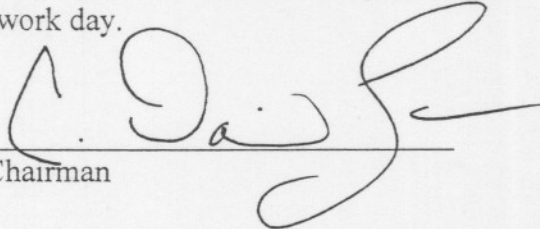
WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee 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 prohibit public servants from having a personal financial interest in a public contract over which their public position gives them control. The Ethics Act says public servants can't have a personal financial interest in a public contract they have the authority to award or control. WV Code 61-10-15 says that if your public position gives you voice, influence or control over the award of a public contract you may not have a personal financial interest in the contract.

The Commission finds that the Pathologist has neither the authority to award speech therapy contracts, nor voice, influence or control over the award of such contracts - even those for students the Pathologist may have tested and certified as eligible for therapy. Therefore, it would not be a violation of either the Ethics Act or WV Code 61-10-15 for him to be employed by the Board to provide therapy to students after his normal work day.


Chairman