

ADVISORY OPINION NO. 2001-30

Issued On November 1, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A potential candidate for **County Board of Education** asks whether it would be a violation for him to serve on the Board while employed as Principal of a private school within the county.

FACTS RELIED UPON BY THE COMMISSION

The private school by which the Principal is employed receives Federally funded services and benefits from the County Board of Education. The Principal asks whether it would be a violation of either the Ethics Act or WV Code 61-10-15 for him to serve on the Board while employed as Principal of the private school.

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

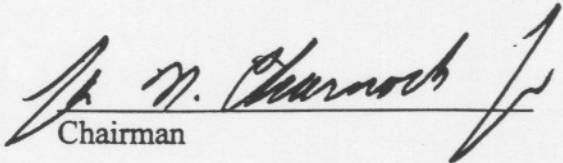
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The Ethics Act prohibits public servants from being a party to, or having a financial interest in, a public contract which their public position gives them the authority to award or control. WV Code 61-10-15, which applies only to certain county personnel, is a criminal misdemeanor statute containing a similar prohibition against private interests in public contracts.

The Ethics Commission finds, however, that the support to a private school mandated by Federal programs is not the type of transaction governed by WV Code 61-10-15 or the Ethics Act's prohibition against private interests in public contracts. The Commission reached a similar result in A.O. 99-34 in regard to a County Commission's financial support of a nonprofit community service organization dedicated to activities advancing general public welfare.

Therefore, it would not be a violation of either the Ethics Act or WV Code 61-10-15 for a private school principal to serve on a county Board of Education, simply because the school received Federally mandated benefits through the Board.

The Commission notes that the Principal's interest in the private school by which he is employed would require him to be recused from deliberation or vote as a Board member on matters which uniquely affect that school.


Chairman