

ADVISORY OPINION NO. 2001-32

Issued On November 1, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Public School Teacher** asks whether she may be employed to implement a program funded by a grant which she helped obtain.

FACTS RELIED UPON BY THE COMMISSION

The State Legislature established and funds remedial educational programs for the State's public schools. The Teacher asks whether it would be a violation of the Ethics Act if she were employed to teach a remedial reading program during summer school - if she had been involved in securing the State grant which funded the program.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code § 6B-2-5 (b) provides that 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."

WV Code 61-10-15 states in part that ... It shall be unlawful for any ... teacher of public schools ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such ... teacher ... he may have any voice, influence or control ...

ADVISORY OPINION

This opinion deals with a grant made to a public entity, a public school or school system. The opinion does not deal with those situations where individuals seek and obtain grants in their own name - grants to further their own work or perform a specific task.

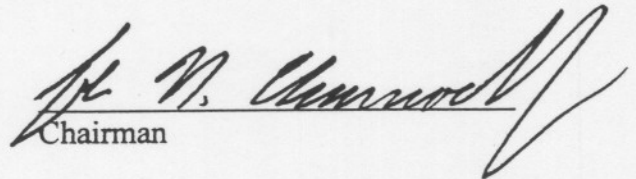
There is no provision in the Ethics Act which specifically limits the use of grant proceeds to disqualify a person from employment in a program financed by a grant which they helped obtain.

The Act does contain a general prohibition against public servants using the influence of their public positions for their own private financial gain. WV Code 6B-2-5(b) It would be a violation of this provision for the teacher to misuse the influence of her teaching position to secure employment in a project financed by the proceeds of a grant which she had helped obtain.

For example, it would be a violation for the teacher to accept responsibility for hiring the summer teacher and then pervert the process by arbitrarily hiring herself. This could also be a violation of WV Code 61-10-15, a criminal misdemeanor statute which prohibits public servants from having a personal financial interest in a public contract over which their public position gives them control.

With the authority to hire comes a duty to act responsibly and use a selection process which is fair and evenhanded, a process which is reasonable and objective. If the teacher is to be considered for a position, she must be excluded from the selection process - a candidate may not be part of the selection process.

The teacher's personal financial benefit from a project financed by a grant she helped obtain is a problem only if her personal gain resulted from a misuse of her public position. It would not be a violation for the teacher to be hired for the summer teaching position, if she had been selected by an independent and objective person or group using a process which was fair and evenhanded.


Chairman