

ADVISORY OPINION NO. 2002-04

Issued On March 7, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commissioner** asks if the Commission may pay for elected county officials' participation in a county financed wellness program established for county employees.

FACTS RELIED UPON BY THE COMMISSION

The County Commission established a wellness program for county personnel which gives them free use of the health facilities of the local YMCA. The Commission does not buy membership for those who participate, but pays the YMCA a pro-rated fee for each day an employee uses the facility. The Commission explains that it conceived the program to further mental and physical health for those who chose to participate.

The Commission asks whether it may extend the benefits of this program to county elected officials, including themselves.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(b) provides in part 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."

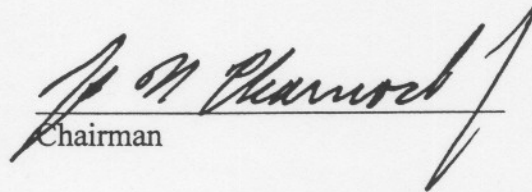
WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee 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

With the cost of medical care growing at an alarming rate, wellness programs are being recognized as a legitimate part of an agency's efforts to increase the health and welfare of its personnel, while reducing agency expenses. In A.O. 98-28 the Ethics Commission ruled that it would not be a violation of the Ethics Act for a State agency to underwrite a wellness program which provided financial incentives to public servants who participate in the program. There the Commission said:

“The Ethics Act prohibits public servants from using their public positions for their own private financial gain or the private financial gain of another person. This prohibition does not apply to this agency’s use of its financial resources in a program intended to reduce the overall cost of agency operation, even if the program results in immediate financial gain to its members.”

In this case the County Commission’s arrangements with the YMCA appear to be a genuine effort by the County Commission to conform to evolving wellness concepts and the Ethics Commission finds that it would not be a violation of either the Ethics Act or WV Code 61-10-15 for the Commission to maintain and underwrite the program or to extend its benefits to elected county officials, including the County Commissioners themselves.


Chairman