

ADVISORY OPINION NO. 2002-08 Revised

Issued On May 2, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education Member** asks if the business she and her spouse own and operate may bid on Board construction contracts once her term on the Board has expired.

FACTS RELIED UPON BY THE COMMISSION

The Board Member is not seeking reelection and her term will expire at the end of June, 2002. She and her spouse own and operate a construction company and they would like to bid on and perform school building construction work, once her term on the Board has expired.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(e) *Confidential information*. -- "No present or former public official or public employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interest of another person."

WV Code 6B-2-5(f) *Prohibited representation*. provides in part "No present or former elected ... public official ... shall, during or after his or her public ... service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service ... and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation."

WV Code 6B-2-5(g) *Limitation on practice* provides in part "No elected ... public official ... shall, during his or her public service ... or for a period of six months after the termination of his or her public service ... with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served ... in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed regulation;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds."

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Three provisions of the Ethics Act follow public servants when they leave government service. Each of the three will be considered in turn.

(e) Confidential information. This provision applies to all former public servants and prohibits the improper use or disclosure of confidential agency information acquired while in government service. The provision does not bar the Board Member's company from bidding on Board construction work, but does prohibit the Board Member from using nonpublic, confidential Board information to secure a competitive advantage over other bidders.

(f) Prohibited representation. This provision requires former agency officials to obtain agency consent before acting in a representative capacity on a matter in which they had been personally and substantially involved, while with the agency. It applies not just to involvement in action before the agency, but any forum, e.g. in state court or a federal regulatory agency.

The provision applies only to "... a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties ..." in which the official had been involved in a decision making, advisory, or staff support capacity.

The Commission finds that this provision would not prevent the Board Member's company from bidding on school building contracts after she ceased to serve on the Board, even if she had, while on the Board, been involved in the decision to undertake the project being bid upon.

(g) Limitation on practice. This provision prohibits elected public officials from appearing in a representative capacity before their public agency in regard to certain matters, while they are with the agency and for six months after leaving the agency. One of the matters is "(E) To influence the expenditure of public funds."

However, because the Legislature has dealt specifically with the subject of public contracts in subsection (d), "Interests in public contracts.", the Commission finds that (E) is not intended to encompass and regulate public contracts. Therefore, subsection (g), "Limitation on practice." does not prohibit the Board Member's business from submitting a bid for school building projects or performing work in regard to such projects for a period of six months after the end of her term of office.



Chairman