

ADVISORY OPINION NO. 2002-09

Issued On April 4, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education Member** asks if the Board may award a contract to the hospital where her spouse is employed.

FACTS RELIED UPON BY THE COMMISSION

The Board Member's husband is a physician employed on the staff of a local hospital which operates as a private not-for-profit corporation. The Member's husband will not receive any commission, bonus, or other remuneration if a contract between his employer and the Board of Education is approved.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(d)(1) provides in pertinent part that . . . no elected or appointed public official or public 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 the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control. . . .

W. Va. Code § 6B-1-2(c) provides in pertinent part that . . . certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

W. Va. Code § 61-10-15(a) states in pertinent part: It shall be unlawful for any member of a county commission . . . or any member of any other county or district board or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

W. Va. Code § 61-10-15(e), added in 2002, exempts any person subject to the above-stated prohibition if the employee or his or her spouse is a salaried employee of a vendor or supplier under a contract and, if the employee, his or her spouse or child:

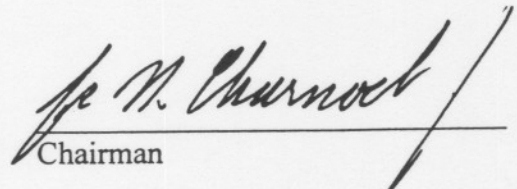
- (1) Is not a party to the contract;
- (2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract;
- (3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;
- (4) Does not participate in the deliberations or awarding of the contract; and
- (5) Does not approve, vote for or otherwise authorize the payment for any services performed or supplies furnished under the contract.

ADVISORY OPINION

Both the Ethics Act and W. Va. Code § 61-10-15 prohibit public servants from having a personal financial interest in a public contract over which their public positions give them control. The Ethics Act's prohibition in W. Va. Code § 6B-2-5(d) applies not just to public servants, but also to their spouses and businesses in which they, or their spouses, have an ownership interest of more than ten per cent. W. Va. Code § 61-10-15 goes beyond the coverage of the Ethics Act to include any business with which public servants or their spouses are associated as owners or employees.

W. Va. Code § 61-10-15 is a criminal statute which applies only to certain county personnel, including the members of county Boards of Education. Violation of W. Va. Code § 61-10-15 is a misdemeanor and conviction of this statute establishes grounds for removal from office. The Ethics Commission is responsible to advise public servants about W. Va. Code § 61-10-15, but has no role in its enforcement, and is without authority to grant exemptions from its operation.

It would not be a violation of the Ethics Act for a county Board of Education to transact business with a company that employed a Board Member's spouse, so long as neither the spouse nor the Board Member has an ownership interest of more than ten per cent in the company, and the Board Member took no part in the Board's action. Likewise, based on the exemption added in 2002, it would not be a violation of W. Va. Code § 61-10-15 for the Board to transact business with the employer of a Board Member's spouse, where neither the spouse nor the Board Member have any ownership interest in the company, provided the Board Member discloses her interest in the contract, and takes no part in the Board's deliberation and vote on the contract.


Chairman