

ADVISORY OPINION NO. 2003-02

Issued On February 6, 2003 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Farmland Protection Board Member** asks whether the Board may contract with a private, nonprofit organization for which his wife provides services as an independent contractor.

FACTS RELIED UPON BY THE COMMISSION

The Board Member's spouse works as an independent contractor for a private, nonprofit Land Trust with goals and objectives similar to some of the Board's responsibilities. The Board may find it prudent to contract with the Trust to perform certain functions necessary to carry out the Board's mission. The Board Member asks whether, and to what extent, the Board may contract with the Trust, while his wife is engaged by the Trust as an independent contractor.

CODE PROVISIONS RELIED UPON BY COMMISSION

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

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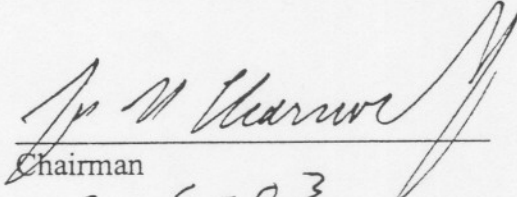
WV Code 61-10-15 is a criminal statute governing the activities of certain county personnel, including the members of the Farmland Protection Board. It prohibits them from having a direct or indirect financial interest in a public contract over which their public position gives them control. The Board's members control the Board's contracts and their recusal from action in regard to its contracts does not excuse compliance with the requirements of 61-10-15.

If the Board were to contract with the Land Trust for services that are performed by the Board Member's spouse as an independent contractor, he would be pecuniarily interested, indirectly, in the contract. In such a situation the spouse becomes a subcontractor and the Board Member's indirect financial interest in the Board's contract would be at odds with 61-10-15.

However, it would not be a violation of the Ethics Act or 61-10-15 for the Board to contract with the Land Trust, so long as his spouse is not directly involved in or paid for providing services contracted for. The Board member may be involved in the discussion and vote on matters between the Board and Land Trust, so long as they do not deal with those involving his spouse.

WV 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 meets certain specific requirements. This proviso has no application here since the Board Member's spouse is, by the terms of her contract with the Land Trust, an independent contractor and not an employee.

However, the Board may contract with the Land Trust, so long as his spouse is not directly involved in and compensated for providing services contracted for. The Board member may be involved in the discussion and vote on matters between the Board and Land Trust, so long as they do not deal with those involving his spouse.


Chairman
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