

ADVISORY OPINION NO. 2004-11

Issued On July 1, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education** asks if it can hire the County Superintendent to fill a vacant Principal's position.

FACTS RELIED UPON BY THE COMMISSION

A County School Superintendent has applied for a vacant position as Principal of a county school. If selected to fill the Principal's position, the Superintendent will immediately resign. Ordinarily, the Superintendent is required to make all recommendations to the Board of Education concerning employment of school personnel.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) provides in pertinent part that a public official . . . 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.

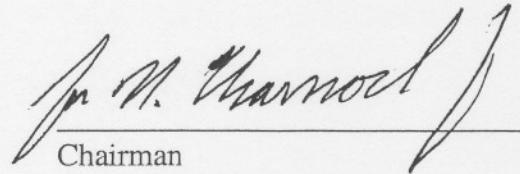
W. Va. Code § 61-10-15 (a) states in part that . . . It shall be unlawful for a . . . superintendent . . . of public schools . . . to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract . . . [over] which as such . . . superintendent . . . he may have any voice,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

W. Va. Code § 8-4-1(a) states: The county superintendent shall be appointed by the board upon a majority vote of the members thereof to serve for a term of not less than one, nor more than four years. At the expiration of the term or terms for which he or she shall have been appointed, each county superintendent shall be eligible for reappointment for additional terms of not less than one, nor more than four years: *Provided*, That at the expiration of his or her term or terms of service the county superintendent may transfer to any teaching position in the county for which he or she is qualified and has seniority, unless dismissed for statutory reasons. . . .

ADVISORY OPINION

There is no provision in the Ethics Act or W. Va. Code § 61-10-15 which prohibits a County School Superintendent from applying for a vacant position in the school system. However, the School Superintendent is required to make a recommendation to the Board of Education concerning which applicant should be selected to fill a vacant position. The Commission finds that it would create the appearance of using public office for private gain for a County Superintendent, or one of her

subordinates, to nominate herself for a vacant position, even if she is well qualified. If the Superintendent were to resign, her successor could nominate her for a vacant position and she could then be hired as a Principal because she would no longer have any voice, influence or control over the selection process.


Chairman