

ADVISORY OPINION NO. 2004-18

Issued On October 7, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education Member** asks if she can be employed by a contractor providing services to the Board.

FACTS RELIED UPON BY THE COMMISSION

A School Board Member is employed by a company which provides nursing services for diabetic children under a contract with the Board of Education. She is a salaried employee of the contractor without an ownership interest in the business. Furthermore, she receives no commission under the contract. The school system governed by this Board of Education is presently under the control of the State Department of Education. Consequently, the Board Members presently have no authority to approve contracts or payments for services rendered under existing contracts.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

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 (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 ... member ... he may have any voice, influence or control:

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, if the employee, his or her spouse or child:

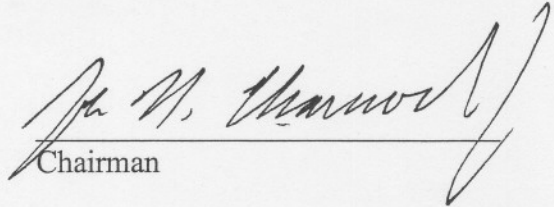
- (1) Is not a party to the contract;
- (2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract;
- (3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;
- (4) Does not participate in the deliberations or 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 WV Code 61-10-15 prohibit public servants from having a personal financial interest in a public contract over which their public position gives them control. At the present time, the requester has no authority or control over contractual determinations. That authority is retained by a state agency.

Accordingly, so long as the State Department of Education retains control over the county school system, the Board Member's employment by a contractor providing services to the school system is not prohibited by any provision in the Ethics Act or W. Va. Code § 61-10-15.

If and when control of the school system is returned to the County Board of Education, the Board Member's continued employment by a contractor providing services to the Board will not be precluded, so long as the Board Member is recused from any deliberation and vote on matters regarding her employer. For example, the Board Member could not participate in determinations involving payment of invoices from her employer, or extension, modification or rescission of a contract with her employer.


Chairman