

ADVISORY OPINION NO. 2006-12

Issued On November 2, 2006 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education Member** asks if the Ethics Act or W. Va. Code § 61-10-15 prohibits her employment, or her spouse's employment, by a company that conducts educational testing.

FACTS RELIED UPON BY THE COMMISSION

The requester is currently serving on a County Board of Education. Her spouse is employed by a corporation that conducts student testing under a contract with the United States Department of Education. These tests are conducted in elementary and secondary schools throughout the country using federal funds. The Board of Education does not select or control the services of the testing contractor nor contribute any funding to support this federal contract.

The requester is contemplating accepting employment with this same company in the coming year. She notes that she and her spouse can be scheduled so they do not work in the county where she serves as a Board Member.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. 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: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body.

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

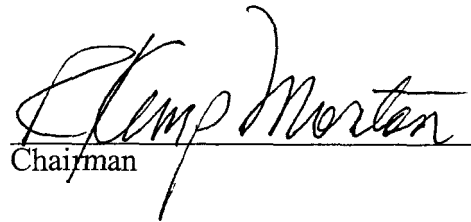
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The limitation in the Ethics Act prohibiting elected officials from having an interest in public contracts under their authority or control includes a specific proviso that allows an official to be employed by the governmental body where he or she serves. This proviso would allow the requester to be employed by the County Board of Education on which she serves without offending the Ethics Act.

However, W. Va. Code § 61-10-15, a separate criminal statute, establishes a stricter standard, prohibiting the requester from having a financial interest in any contract, including employment, over which her county position gives her voice, influence or control. Nonetheless, under the factual scenario presented in this request, neither the requester's employment, nor that of her spouse, arises from a contract which is under her voice, influence or control as a County Board of Education Member. Therefore, the requester's employment by a contractor working for a federal agency is not prohibited by either the Ethics Act or W. Va. Code § 61-10-15.

Inasmuch as student assessments, such as those conducted by this private employer, may potentially generate significant consequences regarding the status and finances of a County Board of Education, in order to avoid any appearance of impropriety, the Commission recommends that the requester obtain an accommodation whereby neither she nor her husband will conduct testing in the county where she serves.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1, *et seq.*, and W. Va. Code § 61-10-15, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6B-2-3, any person acting in good faith reliance on an advisory opinion is immune from the sanctions of W. Va. Code § 61-10-15, and shall have an absolute defense to any criminal prosecution to actions taken in good faith reliance upon such opinion. Further, in accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked.


Chairman