

## **Advisory Opinion 2019-07**

**Issued on March 7, 2019, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

A **County Commission** asks whether it may appoint one of its members to serve on a County Emergency Services Authority.

### **Facts Relied Upon by the Commission**

The County Emergency Services Authority (“Authority”) was created by a special act of the West Virginia Legislature and operates through its own adopted bylaws, rules and regulations for the management of emergency services. The County Commission appoints three members to the Authority, and a city within the county appoints two members. Any member of the Authority is eligible for reappointment, and the County Commission may remove any member for cause. The County Commission provides budgetary funds to the Authority as well as funds for special projects.

According to the special act, “each member of the [A]uthority shall be compensated monthly by the governing body which appointed such member in an amount to be fixed by such governing body.” The County Commission states that Authority members are paid a \$200 fee for each meeting. The Authority has monthly meetings and one annual meeting scheduled through the end of 2019.

### **Provisions Relied Upon by the Commission**

W. Va. Code § 61-10-15(a) provides in relevant part:

It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control . . .

### **Advisory Opinion**

W. Va. Code § 61-10-15 imposes criminal penalties against certain county officials, including county commissioners, who are pecuniarily interested, either directly or indirectly, in the proceeds of any contract or service over which they exercise “voice,

influence, or control.” The Ethics Commission has determined in past Advisory Opinions that county officials are deemed to exercise voice, influence or control through their power to make appointments to boards or commissions and/or through appropriations of funding to such boards or commissions. Advisory Opinion 2018-05.

In Advisory Opinion 2012-47, the Ethics Commission determined that “[t]here is nothing in the Ethics Act or W. Va. Code § 61-10-15 which prohibits a Member of a County Commission from serving on a County Board.” Finding that a County Commissioner may serve as a voting member of a County Ambulance Authority, the Ethics Commission reasoned therein that “County Commissioners normally serve on county boards as a means for a County Commission to monitor and observe the workings of its boards[,]” and “County Commissions have a vested interest in the success of its boards and commissions.”

While the Authority Board members in Advisory Opinion 2012-47 were eligible to receive \$20 per meeting in an amount not to exceed \$600 in a fiscal year, the Ethics Commission nonetheless stated that “[t]his same conclusion follows even if they receive *nominal* compensation for their service on a county board.” *Id.* (*emphasis added*). In Advisory Opinion 2001-24, the Ethics Commission held that neither the Ethics Act nor W. Va. Code § 61-10-15 prohibited a county commissioner from serving on a public transit authority and accepting the compensation for serving when the compensation was set by statute at \$50 per meeting.

The facts here differ from the facts presented in Advisory Opinions 2012-47 and 2001-24 in two important respects. First, the County Commissioner here would be compensated significantly more for serving on the Emergency Services Authority than the situation presented in A.O. 2012-47. The Ethics Commission finds that \$200 per meeting is more than “nominal” compensation for serving on a county board. Second, under the special act establishing the Emergency Services Authority, the County Commission directly compensates the members it appoints and has full discretion to set the amount of that compensation.

**The Ethics Commission therefore holds that W. Va. Code § 61-10-15 prohibits the County Commission from appointing one of its own members to the County Emergency Services Authority when that member would receive more than nominal compensation for serving on the Authority.**

The Ethics Commission notes that its holding does not apply to situations where the law expressly requires a county commissioner to serve on a board. For example, W. Va. Code § 8-29A-2(b) expressly requires that one member of a county airport authority to be a member of the county commission. The Ethics Commission also notes, as reflected in Advisory Opinion 2019-06 issued today, that neither the Ethics Act nor W. Va. Code § 61-10-15 prohibits a County Commissioner’s service on a county board when he or she receives no benefits or compensation for such service.

Additionally, other laws may limit a county commissioner's appointment. Specifically, the common law doctrine against self-appointment stands for the proposition that "[w]hen a statute confers the appointing power, and does not expressly authorize self-appointment, the appointment of some [one] other than self is always contemplated." 41 W. Va. Op. Att'y Gen. 209 (1946). As such, any County Commission or City Council considering appointing one of its own members to a board or commission when the statute does not expressly permit self-appointment should consult with its attorney on whether the proposed appointment is permissible especially when the appointment is to a compensated position.

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, at W. Va. Code §§ 6B-1-1 through 6B-3-11 and does not purport to interpret other laws or rules.*

*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 or the law is changed.*

  
Robert J. Wolfe, Chairperson  
West Virginia Ethics Commission