

# Advisory Opinion 2024-06

Issued on August 1, 2024, by

The West Virginia Ethics Commission

## Opinion Sought

A **Board of Education Superintendent** asks whether a career and technical center principal may operate a consulting business that helps students and their families apply for college scholarships.

## Facts Relied Upon by the Commission

The principal of the career and technical center supervises the instructional and service personnel assigned to the center. The principal or his or her subordinates evaluates the academic performance of students attending the center, conducts disciplinary proceedings involving misconduct by the students, and creates and enforces rules particular to the center and its various classrooms. The principal and his or her subordinates also recruit students to attend the career and technical center. The principal and his or her subordinates do not, however, have authority over students in the county school system who do not attend the career and technical center.

The principal position does not include providing counseling to students and their families on scholarship applications. The counselor at the career and technical center, like counselors in the other secondary schools in the county, is primarily responsible for providing guidance to students in the school system on applying for college scholarships. The counselor is a subordinate of the principal. The principal directs students to the counselor for this service.

## Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(h) states, in pertinent part:

Employment by regulated persons and vendors.

(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding 12 months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working . . . .

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; “seek employment” includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and “subordinate” includes only those agency personnel over whom the public official or public employee has supervisory responsibility . . . .

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

### **Advisory Opinion**

The Ethics Commission must determine whether the Ethics Act prohibits a career and technical center principal from operating a consulting business after work and school hours that helps students and their families apply for college scholarships. This analysis requires the Commission to consider the Act’s restrictions that prohibit or limit public employees from seeking or holding certain secondary employment in W. Va. Code § 6B-2-5(h).

To begin, W. Va. Code § 6B-2-5(h)(6) prohibits full-time public officials and public employees from receiving private compensation for providing services that they are required to provide in the course of their public position or employment. In [Advisory Opinion 1996-13](#), the Commission held that a music teacher in a public school may not offer private voice instruction to students in her choir and chorus classes unless the private lessons differed significantly from the regular school curriculum. In the present situation, providing guidance to students in the school system on applying for college scholarships does not comprise a part of the principal's regular duties. If approached by a student on this issue, the principal would direct students to the appropriate counselor.<sup>1</sup>

**Accordingly, the Commission finds that W. Va. Code § 6B-2-5(h)(6) does not prohibit the principal from operating a consulting business after work and school hours that helps students and their families apply for college scholarships.**

Next, the Commission must analyze the other relevant restrictions in “h” on this outside business activity. W. Va. Code § 6B-2-5(h)(1) prohibits a full time public official or employee from seeking employment with a person or business which A) had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding 12 months or B) has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.<sup>2</sup> The contractual

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<sup>1</sup> It would violate W. Va. Code § 6B-2-5(b) if he or she used such a situation as an opportunity to direct the student to his or her private consulting business.

<sup>2</sup> This code section also restricts employment with agency vendors, but that restriction is not relevant here.

services offered by the principal's proposed consulting business fall within the definition of employment in W. Va. Code § 6B-2-5(h)(2).<sup>3</sup> Accordingly, W. Va. Code § 6B-2-5(h)(1) prohibits the principal from providing paid consulting services to any individual against whom he or she or a subordinate has taken regulatory action within the previous 12 months or who has a matter before the principal or his or her subordinates.

In [Advisory Opinion 2020-01](#),<sup>4</sup> the Commission reaffirmed that the term "regulate" under (h)(1)(A) means "the act or process of controlling by rule or restriction."<sup>5</sup> In [Advisory Opinion 2019-28](#), the Commission held that persons who are under investigation by a sheriff's office or the subject of an outstanding warrant or civil or criminal process are examples of persons with "matters" before the sheriff under (h)(1)(B). The Commission will now address the application of W. Va. Code § 6B-2-5(h)(1)(A) and (B) to the clients of the principal's potential consulting business.

### *Students who attend the career and technical center*

The principal or his or her subordinates evaluates the academic progress of students and enforces the student code of conduct and board of education policies for students at the career and technical center. Further, the principal or his or her subordinates make and enforce policies applicable to the center and its students.

The Commission notes that W. Va. Code § 18A-5-1(a) provides:

The teacher shall stand in the place of the parent(s), guardian(s), or custodian(s) in exercising authority over the school and has control of all students enrolled in the school from the time they reach the school until they have returned to their respective homes, except where transportation of students is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the students while they are in transit to and from the school.

Principals fall within the definition of teachers for purposes of this Code section and therefore have broad responsibilities relating to students enrolled at their schools.<sup>6</sup> The

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<sup>3</sup> The definition of employment in this section includes services provided as an independent contractor.

<sup>4</sup> Citing [Advisory Opinion 2015-03](#)

<sup>5</sup> See also [How to Obtain an Employment Exemption before Looking for a New Job](#).

<sup>6</sup> (c) "Professional educator" has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators are classified as follows:

(1) "Classroom teacher" means a professional educator who has a direct instructional or counseling relationship with students and who spends the majority of his or her time in this capacity;

(2) "Principal" means a professional educator who functions as an agent of the county board and has responsibility for the supervision, management and control of a school or schools within the guidelines established by the county board. The principal's major area of responsibility is the general supervision of all the schools and all school activities involving students, teachers and other school personnel;

...

W. Va. § 18A-1-1(c)

Code also provides that “public school principals . . . shall be the principal instructional leader of the school and shall supervise the management and the operation of the school or schools to which they are assigned to improve student performance and progress.” W. Va. Code § 18A-2-9.

The Commission finds that the duties of the principal or his or her subordinates constitute “the act or process of controlling by rule or restriction” and thus constitute regulatory action.<sup>7</sup> The Commission further finds that the principal’s responsibilities of evaluating students’ academic progress and requiring them to adhere to school policies constitute ongoing matters before the principal.

**The Commission holds that W. Va. Code § 6B-2-5(h)(1)(A) and (B) prohibit the principal from contracting with students who attend the career and technical center or their families to help them apply for college scholarships.**

*Students who do not attend the career and technical center*

The principal and his or her subordinates do not exercise regulatory authority over students who do not attend the career and technical center. Assuming that customers of the principal’s proposed business were not students of the vocational school within the previous 12 months and do not have a matter currently pending before the principal or his or her subordinates, such as an application to attend the center, W. Va. Code § 6B-2-5(h)(1) does not prohibit the principal from contracting with these students or their families through the principal’s proposed consulting business.

**The Commission holds that W. Va. Code § 6B-2-5(h)(1) does not prohibit the principal from contracting with students or their families to help them apply for college scholarships after work and school hours if the students do not attend the career and technical center, have not attended the career and technical center in the previous twelve months, and do not have a matter currently pending before the principal or his or her subordinates.**

The principal must comply with other requirements in the Ethics Act governing secondary employment, such as the prohibitions on the use of the prestige of his or her position as principal of the career and technical center to promote his or her consulting business.<sup>8</sup> He or she may not use public resources<sup>9</sup> or subordinates<sup>10</sup> for his or her

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<sup>7</sup> This holding is consistent with the finding of the Commission in [Advisory Opinion 2011-14](#) in which the Commission noted that elected assessors regulate all property owners in their county every 12 months. The United States Supreme Court and a federal court have also discussed the authority of schools (and their administrators) to regulate the speech of students. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) and *B.L. by & through Levy v. Mahanoy Area Sch. Dist.*, 376 F. Supp. 3d 429, 432 (M.D. Pa. 2019), *aff’d*, 964 F.3d 170 (3d Cir. 2020), *aff’d but criticized*, 594 U.S. 180, 141 S. Ct. 2038, 210 L. Ed. 2d 403 (2021)

<sup>8</sup> See W. Va. Code § 6B-2-5(b)

<sup>9</sup> W. Va. Code R § 158-6-6 (Use of government property), W. Va. Code R. § 158-6-8 (Private work during public work hours)

<sup>10</sup> W. Va. Code R. § 158-6-4

private business.<sup>11</sup> He or she may list that he or she is a principal in his or her business's biography but may not otherwise use his or her official job title for his or her business. [Advisory Opinion 2017-13](#).

*This Advisory Opinion is based on 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, W. Va. Code §§ 6B-1-1 through 6B-3-11, and W. Va. Code § 61-10-15, 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.*



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Suzan Singleton, Acting Chairperson  
West Virginia Ethics Commission

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<sup>11</sup> See Generally [Second Jobs and the WV Ethics Act](#)