

## **Advisory Opinion 2019-06**

Issued on March 7, 2019, by

**The West Virginia Ethics Commission**

### **Opinion Sought**

A **County Commission** asks whether all three of its members may serve as three of the five members of a County Parks and Recreation Authority.

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

The County Parks and Recreation Authority ("Authority") is a five-member board appointed by the Requester. The Requester controls the funding of the Authority by providing the Authority's budgetary funds along with funds for special projects throughout the year. The County Commission asks whether all three of its members may serve on the Authority. They would serve without compensation or benefits.

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

W. Va. Code§ 6B-2-5(b) reads in relevant part:

A public official or public employee 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§ 6B-2-5(j) reads in relevant part:

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person... is a[n] employee ....

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**

The Ethics Commission has previously 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." Advisory Opinion 2012-47 (finding that a County Commissioner may serve as a voting member of a County Ambulance Authority). The Ethics Commission reasoned in that Opinion 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." *Id.* The Ethics Commission further concluded that County Commissioners may vote in their capacity as County Commissioners on matters affecting the county boards on which they serve. *Id.* "Commissioners who serve on these boards, which are subunits of county government, do not, for purposes of the voting provisions in the Ethics Act, have a financial relationship which prohibits them, in their capacity as county commissioners, from voting on matters affecting the boards." *Id.* While the County Commissioners here will not receive benefits or compensation for their service on the Authority, in Advisory Opinion 2012-47 the Ethics Commission stated that "[t]his same conclusion follows even if they receive nominal compensation for their service on a county board." *Id.*

**The Ethics Commission therefore holds that neither the Ethics Act nor W. Va. Code § 61-10-15 prohibits three members of the County Commission from serving as three of the five members of the County Parks and Recreation Authority.**

While the Ethics Act does not prohibit County Commissioners from serving on county boards, at times other laws may limit their service. 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 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.

Finally, the Ethics Commission encourages the Requester to review Open Meetings Advisory Opinion 2011-06, wherein the Ethics Commission's Committee on Open Governmental Meetings determined that a quorum of County Commissioners may serve on a county body only if both bodies notice the meeting.

*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 §§ 68-1-1 through 68-3-11, and does not purport to interpret other laws or rules.*

*In accordance with W Va. Code § 68-2-3, 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.*

/s/ Robert J. Wolfe, Chairman

Robert J. Wolfe, Chairman,  
West Virginia Ethics Commission