

# Advisory Opinion 2025-08

Issued on October 2, 2025, by

The West Virginia Ethics Commission

## Opinion Sought

A **County Board of Education Superintendent** asks whether a board member may privately contract with a service personnel employee to perform work through the employee's lawn mowing side business.

## Facts Relied Upon by the Commission

The Requester asks whether a board of education (BOE) member may hire a BOE school service personnel employee,<sup>1</sup> who maintains a private side business, to repair the member's personal lawn mower. The BOE member explains that his riding lawn mower was not working, and a friend of his told him of a certain service employee who owns and operates a small business fixing lawn mowers out of his garage. The BOE member recognized the name of the service employee and contacted him directly. The service employee went to the member's house to pick up the mower for repairs. Instead, the service employee was able to repair the mower at the member's house by replacing a small part at a cost of only approximately \$60. The BOE member paid the employee's business for the part and services.

## Code Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b)(1) provides:

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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(o) provides:

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<sup>1</sup> Pursuant to [West Virginia Code §18A-1-1\(e\)](#), "service personnel" are defined as "nonteaching school employees who serve a school or schools as a whole, in a nonprofessional capacity."

Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

- (A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or printed media; or
- (B) The solicitation is limited to the posting of a notice in a communal work area; or
- (C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or
- (D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

### **Advisory Opinion**

W. Va. Code § 6B-2-5(o) is the provision of the Ethics Act that must be addressed in this request.<sup>2</sup> The provision prohibits soliciting “private business from a subordinate public official or public employee” over whom the soliciting public official/employee has the “authority to direct, supervise or control.” Consequently, the analysis must first begin with whether a subordinate relationship exists between the BOE member and service personnel employee, and if so, whether the BOE member has the authority to direct, supervise, or control this employee. In [Advisory Opinion 2025-04](#), the Commission, after analyzing several prior advisory opinions, found that the relationship between a BOE member and service personnel employee easily meets the definition of a subordinate relationship.

Thus, the Commission finds again that the service personnel employee is a subordinate of the BOE member, and the member has the authority to direct, supervise, or control the work of the service employee for purposes of W. Va. Code § 6B-5-2(o). There is no question that the BOE member “solicited” the services of the employee’s business.

The Commission will now consider the exceptions in W. Va. Code § 6B-2-5(o)(A)-(D) that may apply which would allow the BOE member to retain the services of the personnel employee’s lawn mower business. The exceptions are triggered when:

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<sup>2</sup>A public contract issue under W. Va. Code § 6B-2-5(d) does not exist since the BOE member and service employee would be involved in a private arrangement. The BOE would not be a party to the contract.

- (A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or printed media; or
- (B) The solicitation is limited to the posting of a notice in a communal work area; or
- (C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or
- (D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

The facts provided by the Requester clearly do not fall into any of these exceptions. Although the value of the business transaction was quite small at only \$60, there is no exception allowed for transactions below a certain threshold.

**Therefore, the Commission finds that the Board of Education member may not solicit lawn mower repair services from the service personnel employee's lawn mower repair business as it would constitute solicitation of business from a subordinate in contravention of W. Va. Code § 6B-2-5(o).**

The Requester is also subject to the prohibition in W. Va. Code § 6B-2-5(b)(1), above, which prohibits a public official or employee from using their position to coerce a subordinate to perform private work or activities. Finally, the Requester asks whether the fact that the BOE member discloses the transaction in a public meeting changes the outcome of today's holding. It does not.

*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, W. Va. Code §§ 6B-1-1 through 6B-3-11, 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.*

/s/ Terry L. Walker  
Terry L. Walker, Acting Chairperson  
West Virginia Ethics Commission