

Ethics News

Volume 3

October 2019

Candidates and campaigns—What are the rules?

Public officials and employees often have questions about whether they may be a candidate for public office or be involved in political campaigns. Questions also arise about what limitations may apply if they are elected to office.

No provision in the Ethics Act disqualifies public employees or public officials from running for office. The Ethics Commission recently revisited this issue in Advisory Opinion 2019-18, in which it held that a state employee may be a candidate for a county office. (Click [here](#) to view the Opinion.)

Public employees must, however, be aware that other laws may restrict them from being a candidate for office or engaging in political activities. For example, a deputy sheriff may not be “a candidate for or hold any other public office in the county in which he or she is employed” pursuant to W. Va. Code § 7-14-15.

Successful candidates must also be aware that the Ethics Act, W. Va. Code § 61-10-15 (a statute which governs county officials and county schools), or other laws may prohibit or restrict their outside business activities or financial dealings with the government office to which they have been elected or other government offices over which they may have influence. (Click [here](#) for Guidelines explaining what constitutes a prohibited interest in a public contract pursuant to the [Ethics Act](#) or [W. Va. Code § 61-10-15](#).)

Successful candidates and public servants must also be aware of the nepotism restriction in the Ethics Act and W. Va. Code § 61-10-15. Click [here](#) for more information.

It is important to remember that public officials and employees may not use public resources in furtherance of political campaign activities such as using a county-owned vehicle to deliver campaign signs or wearing a police uniform in campaign pictures. The Ethics Act also prohibits a public agency’s website or social media from having a link to a public official’s or employee’s campaign website. (Click [here](#) to view W. Va. Code § 6B-2B-3(c).)

On the other hand, no provision in the Ethics Act prohibits public officials or employees from being involved in political campaigns on their own time or elected officials from using their title to endorse other candidates. (Click [here](#) to view Advisory Opinion 2012-15.)

Public servants and candidates are welcome to contact the Ethics Commission with questions.

Open Meetings Q & A

Q: When can a governing body decide to go into executive session?

A: Governing bodies should not decide whether to go into executive session for a particular agenda item until that item is reached on the agenda. Click [here](#) for more information.

Q: Do committee meetings need to be noticed?

A: Yes. All sub-units of a governing body, regardless of size, must follow the Open Meetings Act. This includes regular, standing and *ad hoc* committees.

Election Advisory Opinions

Here are some examples in which the Ethics Commission discussed the rules governing business dealings and other activities. Click on the Opinion number to view it.

- A County Commissioner’s business may not provide materials and supplies to other county agencies. [Advisory Opinion 2017-02](#)
- A part-time elected mayor may be employed by a state agency. [Advisory Opinion 2019-21](#)
- An elected assessor may not operate a real estate business in the same county where he serves as assessor. [Advisory Opinion 2011-14](#)
- A municipal recorder may serve in the legislature. [Advisory Opinion 2012-23](#)
- A county commissioner may be employed by a board of education. [Advisory Opinion 2014-23](#)

Contract law applies to county officials

A law relating to contracts which is separate from the Ethics Act applies only to county officials. This law, at W. Va. Code § 61-10-15, prohibits county officials from entering into public contracts where the county official has influence over the contract and gets a financial benefit from it.

Examples of individuals subject to this law include county commissioners, county clerks, appointed members of Public Service Districts and appointed members of county parks and recreation boards. The law also applies to county school board members and certain county employees.

This law makes it a criminal misdemeanor for county officials to do certain types of business with the county agency they serve. The business does not have to be in the form of a sophisticated written contract. The statute also applies to basic purchases at a store or providing a service on an as-needed basis, for example.

An official must have “voice, influence or control” over a contract for the prohibition to apply. The phrase “voice, influence or control” has been interpreted broadly by the West Virginia Supreme Court and includes the power to approve an agency’s budget or to appoint its board members. For example, an assistant prosecuting attorney exercises voice, influence or control over the county board of education because he or she is required by statute to render legal advice to the board of education. Click [here](#) for more information. If a county official has voice, influence or control over a county contract, then he or she may not have a financial interest in the contract. This financial interest can be direct or indirect. Click [here](#) for this Advisory Opinion.

This law also applies to employment contracts. With limited exceptions, the law prohibits the employment of a county official’s spouse, someone who lives with a county official and individuals financially dependent on a county official.

Click [here](#) for more information on W. Va. Code § 61-10-15.

If a contract is prohibited and it would create excessive cost or an undue hardship for the governing body, then the governing body can request an exemption from the Ethics Commission. Click [here](#) for how to seek a Contract Exemption.

Contact us

Physical address:
210 Brooks Street
Suite 300
Charleston, WV 25301

Phone:
(304) 558-0664
(866) 558-0664

Email:
ethics@wv.gov

Website:
ethics.wv.gov

Recent Advisory Opinions

Advisory Opinion 2019-13: An employee of a state agency may use his personal rewards cards when purchasing gasoline with a state-issued credit card and keep the bonus points for his personal use.

The Ethics Act allows public officials and employees to use bonus points acquired through “frequent traveler programs” while traveling on official government business if the use does not result in additional costs to the government.

This Opinion found that a gasoline retailer’s rewards program qualifies as a “frequent traveler program” and that the word “traveler” includes both local travel and out-of-town travel.

Advisory Opinion 2019-10: A county Commissioner may participate in executive sessions when general matters affecting the County Development Authority on which her son serves are discussed. She may not participate in matters which uniquely affect her son such as a disciplinary action against him.

Advisory Opinion 2018-01: A County Commission’s employees and officials may solicit local businesses and individuals to sponsor public park benches.

The Opinion found that sale of sponsorships for the park benches is not a solicitation for a gift and that the rule governing soliciting for gifts does not apply. The sales are a fundraising activity based upon an exchange of value. The value to the sponsors is that they or their business are given the equivalent of naming rights for benches which will be situated in a public area. Officials or employees may sell the sponsorships and directly contact local businesses and individuals.