

ADVISORY OPINION NO. 2007-08

Issued On August 2, 2007 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Public School Teacher** asks if he may bid on a contract to provide vending machine services to the Board of Education where he is employed.

FACTS RELIED UPON BY THE COMMISSION

The requester is employed as a Band Director by a County Board of Education. He and his wife also operate a vending business. The County Board of Education is seeking bids from vendors who wish to provide soda, juice and milk vending services in the county schools.

As a school's Band Director, the requester has no control or influence over the purchasing process. The requester would not perform any work related to this contract during school hours. Vending machines would be stocked and serviced by his wife and other company employees. If awarded the contract, the requester's business would make payments from vending proceeds to each school in which one or more vending machines are placed in accordance with the terms of the winning bid.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(d)(1) *Interests in public contracts*, provides in part that . . . no elected or appointed official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in . . . a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body.

W. Va. Code § 61-10-15 states in part that . . . It shall be unlawful for any . . . principal or teacher of public schools . . . to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract . . . [over] which as such . . . teacher . . . he or she may have any voice, influence or control

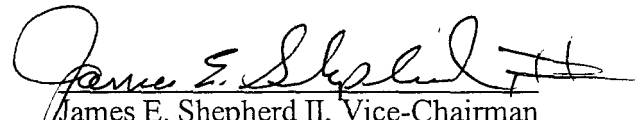
ADVISORY OPINION

Both the Ethics Act and W. Va. Code § 61-10-15 include prohibitions against public servants having private financial interests in public contracts, purchases or sales over which their public position gives them a degree of authority or control. W. Va. Code § 61-10-15 is a criminal misdemeanor statute which applies exclusively to certain county public servants, including teachers, but has no application to state or municipal public servants.

The Ethics Act prohibits public servants from being a party to or having a personal financial interest in a public contract, purchase or sale that their public position gives them authority to award or control. W. Va. Code § 61-10-15 contains a somewhat broader prohibition against public servants who are subject to its limitations, including teachers, from having a financial interest in a public contract over which their public position gives them voice, influence or control. The requester's position as a band teacher does not give him authority or control over a contract with the County Board of Education to provide certain vending services in all county schools, nor does he have

meaningful voice, influence or control over the Board of Education's decision to enter into that contract. Therefore, it would not be a violation of either W. Va. Code § 6B-2-5(d) or W. Va. Code § 61-10-15 for a business operated by the requester and his spouse to bid on or be awarded a contract to provide vending services to the County Board of Education by which he is employed. As noted in his letter requesting this Advisory Opinion, the requester should perform any work related to this vending contract on his personal time, and not during school hours.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and W. Va. Code § 61-10-15, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6B-2-3, any person acting in good faith reliance on an advisory opinion is immune from the sanctions of W. Va. Code § 61-10-15, and shall have an absolute defense to any criminal prosecution to actions taken in good faith reliance upon such opinion. Further, 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.


James E. Shepherd II, Vice-Chairman