

ADVISORY OPINION NO. 2005-03

Issued On April 7, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education Member** asks if he may serve as an athletic coach receiving nominal compensation of \$1 annually.

FACTS RELIED UPON BY THE COMMISSION

A County Board of Education Member is serving without compensation as a middle school assistant coach. The WV Board of Risk and Insurance Management has determined that volunteer coaches should be paid a nominal salary of \$1.00 per year. This policy is intended to maintain existing liability insurance coverage for the actions of these coaches.

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 employee . . . 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 member . . . of any . . . county or district board . . . to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract . . . [over] which as such member he may have any voice, influence or control. . . .

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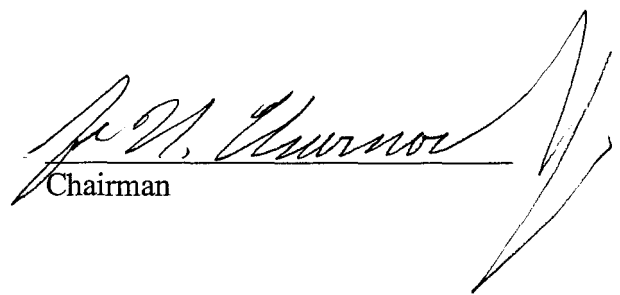
In Advisory Opinion 2000-18, the Commission determined that the specific employment proviso in W. Va. Code § 6B-2-5(d) pertaining to interests in public contracts permits a County Board of Education Member to serve as a coach for the school system where he or she serves. Further, that same opinion concluded that a Board Member who coaches without compensation has no pecuniary interest in his or her coaching contract. Therefore, the provisions of W. Va. Code § 61-10-15 are not applicable to that contract.

The Board Member here would receive a nominal salary for coaching in the school system. W. Va. Code § 61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he may have voice, influence or control over the letting of such contract.

However, in Advisory Opinion 95-09, the Commission noted that the West Virginia Supreme Court of Appeals, in Jordan v. McCourt, 62 S.E.2d 555 (1950), held that there are certain instances where the pecuniary interest in a public contract is so small as to be deemed *de minimis* and, although a technical violation of W. Va. Code § 61-10-15 may exist, it is not the type of pecuniary interest which triggers the sanctions of W. Va. Code § 61-10-15.

Accordingly, consistent with those earlier opinions the Commission finds that the Board Member would not violate the Ethics Act or W. Va. Code § 61-10-15 by voluntarily serving as a coach in his school system for the nominal salary of \$1.00 annually.

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, or the law is changed.


Chairman