

ADVISORY OPINION NO. 2005-18

Issued On November 3, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

COPY

OPINION SOUGHT

A **County Board of Education Member** asks if he can bid on and hold an assistant athletic coaching position in the school system, if he declines to accept any compensation for serving in that capacity.

FACTS RELIED UPON BY THE COMMISSION

The requester is an elected member of a County Board of Education. He is interested in serving as an assistant coach for an athletic team in his county. The position is a paid position and must be filled through an application process. The requester would not accept any pay, if he is offered the position.

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. . . .

ADVISORY OPINION

The Commission previously concluded in Advisory Opinion 2000-18 that the employment proviso in W. Va. Code § 6B-2-5(d) permits a County Board of Education Member to serve as a coach for the school system where he or she serves. In that same opinion, the Commission further 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, and serving as a full or part-time employee, without compensation, is not prohibited.

In Advisory Opinion 2005-03, the Commission reaffirmed this approach while authorizing a volunteer coach to be compensated a nominal salary of \$1 annually in order to receive insurance coverage through the Board of Risk and Insurance Management. The requester would likewise be permitted to receive a *de minimis* salary of \$1 annually without violating W. Va. Code § 61-10-15.

Accordingly, the requester may bid on an assistant coaching job and serve in that position without compensation. The requester would still be required to meet all statutory and regulatory requirements to be awarded the position. Further, to avoid any appearance of impropriety, the requester should be recused from any vote or discussion by the Board of Education when the new assistant coach is chosen. In addition, the requester should be sensitive to the appearance of

impropriety regarding subsequent votes on athletic matters, in accordance with the Ethics Commission's Legislative Rule on voting, 158 C.S.R. 9 (1992).

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.


Chairman