

ADVISORY OPINION NO. 2004-21

Issued On December 2, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commission** asks if a person employed as the 911 Addressing Coordinator may also serve on the 911 Advisory Board.

FACTS RELIED UPON BY THE COMMISSION

The County Commission appoints citizens to serve on the 911 Advisory Board to oversee operation of the enhanced emergency telephone (or 911) system, as authorized by W. Va. Code § 24-6-5(e). That statute provides that the 911 Board “may make recommendations to the county . . . regarding the operation of the system.”

According to the County’s 911 Employee Handbook, the 911 Advisory Board has “undisputed control of the hiring, firing and policy making with final approval lying with the County Commission. . . .” The County employs a 911 Addressing Coordinator in the 911 Center. This same individual had been appointed to serve on the County’s 911 Advisory Board.

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 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 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 Ethics Act

Pursuant to W. Va. Code § 6B-2-5(d)(1) a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. As an

appointed member of the 911 Advisory Board, a Board Member would have authority over his own employment contract.

However, W. Va. Code § 6B-2-5(d)(1) specifically provides that nothing contained therein shall be construed to prevent or make unlawful the employment of any person with any governmental body. Therefore, it would not be a violation of the Ethics Act for an employee of a 911 system to serve on the governing board which provides recommendations on operating and staffing the system to the County Commission.

West Virginia Code § 61-10-15

W. Va. Code § 61-10-15, a separate criminal statute, contains a stricter standard than the Ethics Act, and imposes criminal penalties against any county official, including members of any county board, who are pecuniarily interested, either directly or indirectly, in the proceeds from a public contract over which those officials may exercise voice, influence or control. Any person who violates this provision is guilty of a misdemeanor and may be removed from public office. The Commission has no authority to grant a waiver of this prohibition.

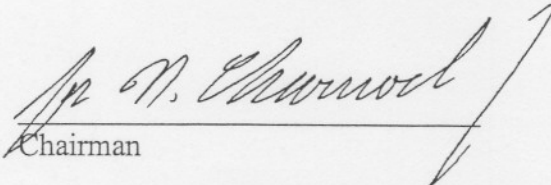
Unlike the Ethics Act, W. Va. Code § 61-10-15 does not contain a proviso excluding employment contracts from its coverage. Thus, in *Cimino v. Board of Education*, 158 W. Va. 267, 210 S.E.2d 485 (1974), the WV Supreme Court of Appeals held that the prohibition in W. Va. Code § 61-10-15 applies to employment contracts.

In *Alexander v. Ritchie*, 132 W. Va. 865, 53 S.E.2d 735 (1949) the WV Supreme Court further observed that:

"The purpose of the statute is to protect public funds, and give official recognition to the fact that a person cannot properly represent the public in transacting business with himself. To permit such conduct would open the door to fraud. The statute is designed to remove from public officers any and all temptation for personal advantage. . . ."

Moreover, the WV Supreme Court held, in *Fisher v. Jackson*, 107 W. Va. 138, 147 S.E. 541 (1929), that the recusal of a public official from voting on a particular matter in which he has a direct or indirect pecuniary interest is not sufficient to immunize that official from the sanctions contained in WV Code 61-10-15.

Therefore, the Commission finds that W. Va. Code § 61-10-15 prohibits a member of the 911 Advisory Board from being employed in a position which is subject to the Advisory Board's oversight responsibilities.


Chairman