

ADVISORY OPINION NO. 2004-02

Issued On April 1, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A candidate for County Board of Education asks whether it would be a violation for her to serve on the Board while employed as Director of a private day care center within the county.

FACTS RELIED UPON BY THE COMMISSION

The requester is a candidate for the County Board of Education. She is employed as the Director of a private child care facility in the county. This business is owned by the requester's parents and she is listed as an officer in the corporation, but does not have an ownership interest in the business. The County Board currently employs four pre-Kindergarten (pre-K) teachers, one of whom is placed in the requester's facility to teach three and four-year old children under State Board of Education Policy 2525. This Policy implements certain federal mandates and specifically authorizes collaborative settings wherein county pre-K teachers may be placed in a licensed community child care facility such as the one where the requester works.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

WV 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

WV 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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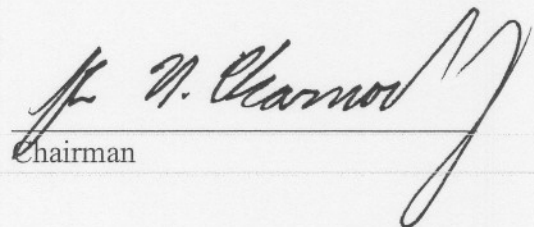
The Ethics Act prohibits public servants from being a party to, or having a financial interest in, a public contract which their public position gives them the authority to award or control. WV Code § 61-10-15, which applies only to certain county personnel, is a criminal misdemeanor statute containing a similar prohibition against private interests in public contracts.

The Ethics Commission finds, however, that the collaborative effort to provide educational services to eligible children does not involve the type of transaction governed by WV Code § 61-10-15 or the Ethics Act's prohibition against private interests in public contracts. The Commission reached a

similar result in A.O. 2001-30 in regard to the Principal of a private school which received monetary support from federal funds dispersed through the County Board of Education.

Therefore, it would not be a violation of either the Ethics Act or WV Code 61-10-15 for a private child care facility director to serve on a county Board of Education, simply because one or more pre-K teachers are employed by the Board to teach at the facility.

The Commission notes that the director's interest in the private child care facility by which she is employed would require her to be recused from deliberation or vote as a Board member on matters which affect that facility.


Chairman