

ADVISORY OPINION NO. 2001-28

Issued On August 9, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Board of Education Member asks if a business owned by the Member and her spouse may contract with a behavioral health center receiving funds from the Board of Education.

FACTS RELIED UPON BY THE COMMISSION

The Board Member and her spouse own a construction company which would like to bid on projects proposed by a behavioral health center. The Board of Education does not appoint the center's directors. The Board's involvement with the center is limited to providing \$15,000 of the center's \$10,000,000.00 annual budget through an excess education levy.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

WV Code 6B-2-5(d)(1) provides in pertinent part: In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public 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 the profits or benefits of 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 pertinent part: 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 or service, or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member . . . he may have any voice, influence or control. . . .

ADVISORY OPINION

The County Board of Education does not supervise or oversee the behavioral health center. The Board's interaction with the center is confined to providing a portion of the center's funding. As a School Board Member, the requester does not have authority to award or control the center's contracts as contemplated by WV Code 6B-2-5(d)(1). Likewise, the requester's role as a Board Member does not give her voice, influence or control over the center's contracts as contemplated by WV Code 61-10-15. Therefore, it would not be a violation of the Ethics Act or WV Code 61-10-15 for the construction company she and her spouse own to contract with the center.


Chairman