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ADVISORY OPINION NO. 2001-09

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WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Commission asks for an exemption to permit it to publish legal publications in a newspaper in which a Commissioner is a substantial owner.

FACTS RELIED UPON BY THE COMMISSION

A newly elected County Commissioner is co-owner of one of two weekly newspapers of general circulation published in the County. The Commissioner's newspaper has a reported circulation of 3,900 and is published in the County seat. The other paper has a reported circulation of a little over 4,700 and is published in a nearby community in the County. The Commission has historically published legal advertisements in both newspapers.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 61-10-15 states in part that ... It shall be unlawful for any member of a county commission ... 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 ... The provisions of this section shall not apply to publications in newspapers required to be made by law.

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 ...

ADVISORY OPINION

**West Virginia Code 61-10-15**

WV Code 61-10-15 prohibits certain county personnel, including county commissioners, from having a direct or indirect financial interest in a public contract over which their public position gives them control. However, that provision contains an express exemption for legally required newspaper publications.

Because of that express exemption, the Ethics Commission rules that the County Commission's publication of legal advertisements in the Commissioner's newspaper would not constitute a violation of WV Code 61-10-15, so long as the advertisements are "required to be made by law."

### **The Ethics Act**

Like WV Code 61-10-15, the Ethics Act prohibits public servants from being a party to or having a financial interest in a public contract which they have the power to award or control. This prohibition makes it unlawful for the County Commission to contract for services from a business in which one of its members has a substantial ownership interest.

Unlike WV Code 61-10-15, the Ethics Act's prohibition does not contain a blanket exemption for the publication of required legal notices. However, the Legislature gave the Ethics Commission the power to grant a specific exemption where it appeared that the prohibition would result in undue hardship or substantial interference with an agency's operation.

The County Commission has historically run its legal advertisements in both the County's weekly newspapers and believes that continuing that practice is necessary to the efficient and effective communication of its activities to the citizens of the County. The reported circulation figures support the County Commission's decision to use both newspapers.

Therefore, the Ethics Commission hereby grants the County Commission an exemption from the prohibition of WV Code 6B-2-5(d) to allow it to continue publishing its required legal advertisements in both papers.

  
Chairman