

ADVISORY OPINION NO. 2001-24

**Issued On August 9, 2001 By The
WEST VIRGINIA ETHICS COMMISSION**

OPINION SOUGHT

A **County Commissioner** asks if he may be appointed by the Commission to serve on the county's public transit authority and accept the compensation set by statute for such service.

FACTS RELIED UPON BY THE COMMISSION

The Transit Authority is a public corporation established by the provisions of the Urban Mass Transportation Authority Act, WV Code Chapter 8, Article 27. It is governed by a board of directors comprised of five members, two of whom are appointed by the County Commission. Two members are appointed by one city and the remaining member is appointed by a second city. Board members are paid \$50 per meeting, not to exceed \$600 for any fiscal year.

CODE PROVISIONS RELIED UPON BY 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 ...

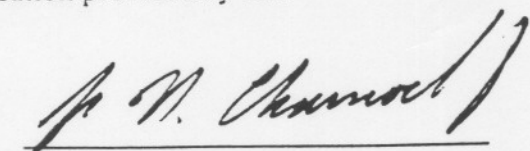
WV Code 61-10-15 states in part that ... It shall be unlawful for any member ... of any ... county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such member he may have any voice, influence or control ...

WV Code 8-27-5 states in part: Any individual who is a . . . member of the governing body of, any participating government is eligible to serve as a member of the [public transit authority] board.

ADVISORY OPINION

Both the Ethics Act and WV Code 61-10-15 prohibit public servants from having a financial interest in a public contract over which their public position gives them control. Here the compensation to be paid Authority board members is set by statute at \$50 per meeting and is not subject to the control of either the County Commissioners or the Authority's board.

Since he would have no control over compensation, neither the prohibition of the Ethics Act or of WV Code 61-10-15 would apply and it would not be a violation of either for the County Commissioner to serve on the board and accept the compensation provided by law.


Chairman