

ADVISORY OPINION NO. 2000 -18

Issued On September 7, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Board of Education Member asks whether he may serve as an uncompensated coach within the county school system.

FACTS RELIED UPON BY THE COMMISSION

Prior to his election to the Board, the Board Member was employed as a coach in the county's school system. He would like to continue coaching while serving on the Board and has agreed to coach without any compensation, if he is permitted to do so.

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 ... 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.

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

WV Code 6B-2-5(d) *Interests in public contracts*. provides that public servants may not be a party to a public contract which their public position gives them the power to award or control. However, this provision is subject to the following proviso: "*Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body" Therefore, the Commission finds that it would not be a violation of the Ethics Act for the Board Member to act as a coach for the school system.

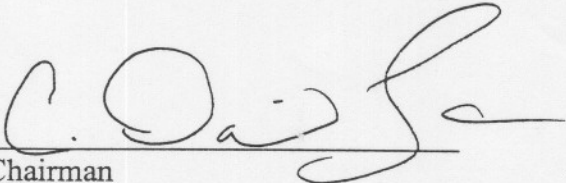
WV Code 61-10-15

WV Code 61-10-15 is a criminal misdemeanor statute which prohibits public servants from having a direct or indirect pecuniary interest in public contracts which their public positions give them the authority to award. The members of the Board have the authority to award Board contracts, including those for the employment of coaches.

In A.O. 94-02 the Commission observed that the purpose of WV Code 61-10-15 "... is to protect public funds and to recognize the fact that a person cannot properly represent the public in transacting business with himself. The section is designed to remove from public office any temptation for personal advantage."

In that Opinion the Commission ruled that it would not be a violation for a member of an Airport Authority Board to act as realtor in the sale of property to the Authority "... **provided** he, his agency or members of his real estate agency do not receive any part of the sales commission or any other benefit arising from his participation as a co-broker on the contract to purchase the property."

If the Board Member is not compensated for his work as coach, he will have no pecuniary interest in the coaching contract and the provisions of WV Code 61-10-15 do not apply. It would not be a violation for him to coach without compensation.


Chairman