

ADVISORY OPINION NO. 98-06

Issued on March 5, 1998 by the
WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Member of a State Board

OPINION SOUGHT

Is it a violation of the Ethics Act if a State Board contracts with a company owned by one of its members?

FACTS RELIED UPON BY THE COMMISSION

The requester is a part-time, appointed member of a State Board. He is also the majority owner of a Company which is a State vendor. His Company has a contract with the State designating it in some instances as one of several approved suppliers of specified goods and services from which State agencies may purchase and in other instances as the exclusive provider to State agencies for certain products.

The requester asks if he is disqualified from serving on the Board because his Company is designated a qualified State vendor or because the Board might make purchases from his Company under the State contract.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...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: Provided, That nothing herein shall be construed to... prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

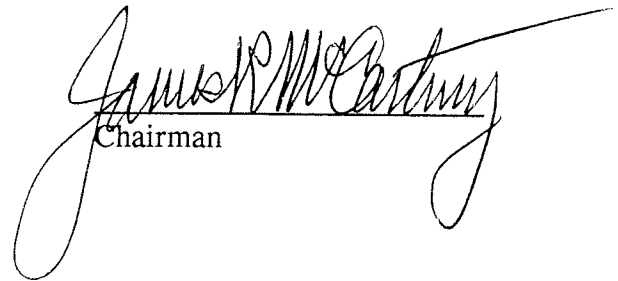
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Public servants may not be parties to, or have financial interests in, any contracts over which their public positions give them authority or control. As a member of the State Board, the requester has authority and control over that Board's contracts.

However, the same provision of the Ethics Act which prohibits private interests in public contracts also contains an exception that applies to part-time, appointed public officials. Under that exception, part-time appointed public officials, their spouses, or businesses with which they are associated may enter into contracts with their governmental agency **provided** they disclose their interest and then recuse themselves from any vote or other official action on that matter.

The requester, as a part-time appointed public official, would not be in violation of the Ethics Act if the State Board on which he serves contracts with his Company provided he discloses his potential financial interest in such a contract to fellow Board members and takes no part in any deliberation and vote on such a contract.

Neither the designation of his Company as a qualified State vendor, nor any contract his State Board may enter into under the provisions noted above would automatically disqualify the requester from serving on the State Board. He should, however, refrain from taking any action which would promote the interests of his Company among his fellow Board members.



Chairman