

ADVISORY OPINION NO. 97-15

Issued on June 5, 1997 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

County Board of Education Member

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 for a County Board of Education member to bid on a multi-county Training Center's federally funded construction contracts?

FACTS RELIED UPON BY THE COMMISSION

A Board of Education member and her spouse own and operate a general contracting business. She is concerned to establish whether their business may bid on federally funded construction projects of a multi-county Training Center which serves their county.

The Training Center serves a three county area. Its operations are directed by a board whose twenty-five members are elected by the Center's general membership. The Board of Education had no role in the appointment of the Center's board members.

The Board of Education has a very limited involvement with the Center. Its Superintendent of Schools serves on the Center's board and it provides some in-kind transportation services and contributes twenty thousand dollars to the Center's seven million dollar budget.

The Center created two separate non-profit Corporations in order to obtain two federal grants to construct independent living facilities for Center clients. These Corporations are governed by boards whose members are appointed by the Chairman of the Center's board. No funds from either the Board of Education or the Center will be used for these construction projects.

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.

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...district school officer...supervisor or superintendent, principal or teacher of public schools, or any member of any other county or district board, or for any county or district officer 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 Ethics Act

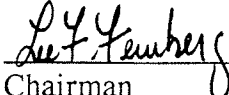
The Ethics Act prohibits public servants from being a party to or having a financial interest in any contract which they have **direct** authority to award or over which they have control. The Ethics Commission finds that since the Board of Education does not appoint any of the members of the Training Center's Board or the Boards of the two non-profit Corporations created by the Training Center, the County Board of Education members have no direct authority over the decision to select a contractor.

Therefore it would not be a violation of the Ethics Act for the Board of Education member's company to submit a bid and provide services under the federally funded projects.

West Virginia Code 61-10-15

West Virginia Code 61-10-15 prohibits designated county officials, including school board members, from having a direct or indirect personal financial interest in a public contract over which their public position gives them "voice, influence, or control."

Under the facts above, the Commission finds that the County School Board members do not have voice, influence or control over the selection of a contractor for the federally funded projects. Therefore it would not be a violation of WV Code 61-10-15 for the company owned by a member of the County Board of Education to submit a bid and provided services under the construction contracts.


Chairman