

**ADVISORY OPINION NO. 95-22**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON MAY 4, 1995**

**GOVERNMENTAL BODY SEEKING OPINION**

Member of a County Solid Waste Authority

**OPINION SOUGHT**

Is it a violation of the Ethics Act or WV Code §61-10-15 for a County Solid Waste Authority Board member's spouse to be employed by that Board?

**FACTS RELIED UPON BY THE COMMISSION**

A member of a County Solid Waste Authority inquires as to whether she can continue to serve on the Authority Board while her spouse is simultaneously employed by that Authority.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of any...county...board, or for any county...officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service...which as such member he may have any voice, influence or control.

**ADVISORY OPINION**

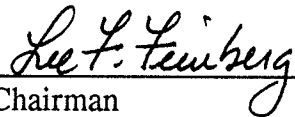
West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he may have voice, influence, or control over the letting of such contract. The Supreme Court of Appeals of West Virginia, in Cimino v. Bd. of Ed. of Marion Co., 210 S.E. 2d 485 (1974), applied this provision to employment contracts. Specifically, the Court held that it would be a violation of WV Code §61-10-15 for a cook to remain employed by the County School Board after her spouse is elected to serve on that County Board of Education.

Similarly, as a member of the Solid Waste Authority Board the requester would have voice, influence or control over any employment contracts the Board may have with its employees. Further, the Court, in Fisher v. Jackson, 107 W.Va. 138. 147 S.E. 541 (1929) held that recusal of a public official from voting on a particular matter in which he has a direct or indirect interest was not sufficient to immunize that official from the sanctions now contained in WV Code §61-10-15.

Therefore, it would be a violation of WV Code §61-10-15 for the requester to serve as a member of a County Solid Waste Authority Board while her husband is an employee of that Authority.

The Ethics Commission notes that it is without authority to grant exemptions to this provision.

The requester also poses questions regarding the procedure for PSC appointments to a Solid Waste Authority and a State employee's ability to serve on such Authorities. These questions are outside the scope of the Ethics Act and cannot be answered by the Commission.

  
Chairman