

ADVISORY OPINION NO. 96-40

Issued on August 6, 1996 By The

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

A County Board of Education

OPINION SOUGHT

Is it a violation of West Virginia Code 61-10-15 for a County Board of Education to purchase supplies from a vendor which employs a Board of Education member?

FACTS RELIED UPON BY THE COMMISSION

A newly elected member of a County Board of Education is employed by a local hardware/farm supply store. Although he has no ownership interest in the company, he is paid a salary plus commission based on gross store sales. In the past, the County Board of Education has made incidental purchases from this store. However, the new Board member is willing to have his sales commission adjusted to exclude sales made to the County Board of Education.

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 district school officer or any member of any other county or district board...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

WV Code 61-10-15 prohibits certain public officials from having personal financial interests, directly or indirectly, in a contract, purchase or sale over which their public position gives them "voice, influence or control". This prohibition applies to members of County Boards of Education, who are deemed to have voice, influence and control over all Board expenditures. The prohibition extends to their spouses, those they support, and businesses in which they have an ownership interest or by which they are employed.

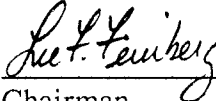
Violation of this prohibition is a misdemeanor and grounds for removal from office. The Ethics Commission is responsible to advise public servants about 61-10-15, but has no role in its enforcement and is without authority to grant exemptions from its operation.

The West Virginia Supreme Court, in *Summers County Citizens League, Inc. v. Tassos*, 367 S.E.2d 209 (WV 1988), held that a county officer is pecuniarily interested in the proceeds of any contract even if he is simply an **employee** of the other party to the public contract. The Board member is not insulated from the sanctions of WV Code 61-10-15 because of a mere employee status with the hardware/farm supply company.

Therefore, regardless of whether the Board member adjusts his sales commission to exclude sales made to the County Board of Education, it would be a violation of WV Code 61-10-15 for the County Board of Education to purchase supplies from his private employer.

The Commission notes that the West Virginia Supreme Court, when interpreting WV Code 61-10-15, has held that whether or not they choose to exercise it, board of education members have voice, influence or control over board contracts by virtue of their public position. The recusal of a public official from voting on a particular matter in which he has a direct or indirect pecuniary interest is not sufficient to immunize that official from the sanctions contained in WV Code 61-10-15.

Finally, the County Board of Education should be aware that the WV Supreme Court held, in *Hunt v. Allen*, 53 S.E.2d 509, that county school board members who voted to pay for goods known to have been sold to the board by another board member in violation of WV Code 61-10-15, were guilty of official misconduct and subject to removal from office, even though they themselves had no personal financial interests in the purchases voted upon.


Chairman