

**ADVISORY OPINION NO. 96-02**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON FEBRUARY 1, 1996**

**GOVERNMENTAL BODY SEEKING OPINION**

A County School Board

**OPINION SOUGHT**

Is it a violation of the Ethics Act for the private employer of a County School Board member to purchase property from the County Board of Education?

**FACTS RELIED UPON BY THE COMMISSION**

The Board of Education authorizes the Director of Transportation to sell its school buses when they reach either a certain mileage or a certain age. After a notice is published in the newspaper the buses are sold via sealed bid to the highest bidder. These bids are opened in the presence of at least one witness by the Superintendent, an Assistant Superintendent or the Treasurer.

A member of a County School Board is employed as a superintendent by a private company. He is not a stockholder, a member of the Board of Directors nor in any manner connected with the purchasing of equipment, supplies or materials for his private employer. Previously this private employer has bid on buses being auctioned by the County Board of Education and would like to continue this practice in the future.

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

West Virginia Code 6B-2-5(d)(1) provides 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...

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

## ADVISORY OPINION

### **The Ethics Act**

A member of a County School Board is employed by a private company. He is not a stockholder, a member of the Board of Directors nor in any manner connected with the purchasing of equipment, supplies or materials for his private employer. Previously this private employer has bid on buses being auctioned by the County Board of Education and the employer would like to continue this practice in the future.

Pursuant to WV Code 6B-2-5(d)(1), no public official, a member of his immediate family or a business with which he is associated may have more than a limited interest in the profits or benefits of a public contract over which he had direct authority and control. The Commission previously determined that this prohibition applies to sales and purchases as well as public contracts.

Clearly, the County Board of Education member has direct authority and control over all County Board of Education contracts. However, the Ethics Commission previously determined that an **employee** of a company which is involved in a public contract has only a limited interest in such contract.

Therefore, it would not be a violation of the Ethics Act for the County Board of Education to sell, via bid, a school bus to a private company which employs a County Board of Education member. **However, this is academic in light of the prohibition against any pecuniary interest in public contracts established in West Virginia Code 61-10-15 and discussed below.**

### **West Virginia Code 61-10-15**

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. Any person who violates this provision is guilty of a misdemeanor and subject to removal from office. The Commission is without authority to grant exemptions from this provision.

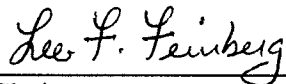
As previously noted, the requester is employed by a private company who would like to bid on buses being auctioned by the County Board of Education. Clearly, the requester, as a member of the County Board of Education, would have voice, influence and control over all contracts entered into by the County Board of Education.

Although the requester is simply an employee of the private company seeking to conduct business with the County Board of Education, the Supreme Court of Appeals has held that under WV Code 61-10-15, a member of a school board has a pecuniary interest even if he is only an **employee** of the private entity which is the other party to the public contract. See *Summers*

*County Citizens League, Inc. v. Tassos*, 367 S.E.2d 209 (1988). Therefore, the requester is not insulated from the sanctions of WV Code 61-10-15 merely because of employee status with the private company.

Further, although the sale of the school buses would be conducted through a sealed bid process, the County Board of Education initially authorizes the sale of the vehicles and must give final approval on the contract. The West Virginia Supreme Court, in *State v. Neary*, 365 S.E.2d (1987), held that the law does not require the showing of an actual exercise of influence, and that a violation of the conflict of interest statute can be proven by a showing that the public official became or remained interested in the proceeds of a contract, in which, by virtue of his office, he may have voice, influence or control.

Therefore, it would be a violation of West Virginia Code 61-10-15 for the County Board of Education to sell, via bid, a school bus to a private company which employs a County Board of Education member, since the requester has voice, influence or control over all contracts entered into by the County Board of Education.

  
Chairman