Advisory Opinion 2026-11

Issued on November 5, 2026, by

The West Virginia Ethics Commission

Opinion Sought

A **County Commissioner** who also serves on the County's Economic Development Authority asks whether he may be associated with an energy development company operating in his county.

Facts Relied Upon by the Commission

The Requester is a county commissioner and serves on the county's economic development authority as the commission's representative. He also is one of three founding members of an energy development business, organized as a limited liability company. He serves as its executive vice president, and he holds approximately 15 percent ownership of the company. Although he is not currently an employee of the company, he inquires whether the Act restricts him from taking up employment with it in the future. While the Requester anticipates realizing a future return on investment, he has not received any cash compensation to date for his roles within the company.

The energy development company owns private real estate within an area of the county adjacent to an industrial corridor. The company's goal is to supply power to the area via grid access or behind-the-meter generation, thereby attracting technology ventures to the site.

The company's property is not owned or controlled by the County Commission or its Economic Development Authority. Further, there is no expectation or indication that the County Commission or the Economic Development Authority will have any authority or control over this energy project. The County does not have any applicable zoning restrictions, therefore, the development company does not foresee any zoning or other land use issues, such as noise, viewshed, lighting, building permits and inspections, coming before the County administration. Also, the Requester asserts that the state of West Virginia has largely preempted the local control of energy companies in the Power

Generation and Consumption Act of 2025, created in House Bill 2014.

The energy development company has no contracts with, or appropriation or licensure requests before, the County Commission or the Development Authority. The energy company has not received county funding or county tax relief of any kind.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b)(1) states, in relevant part:

> A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection.

W. Va. Code § 6B-2-5(d)(1) states, in relevant part:

> [N]o 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 the 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 prevent or make unlawful the employment of any person with any governmental body....

W. Va. Code § 6B-2-5(h) states, in relevant part:

> Employment by regulated persons and vendors. — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding 12 months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to….

W. Va. Code § 6B-2-5(j) states, in relevant part:

(j) Limitations on voting. — (1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class….

W. Va. Code § 61-10-15(a) states, in relevant part:

It is unlawful 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 the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as... [an] officer... he or she may have any voice,

influence or control....

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The Ethics Act, at W. Va. Code § 6B-2-5(d), and W. Va. Code § 61-10-15 are the relevant provisions under the purview of the Ethics Commission dealing with prohibited contracts. The latter is a criminal misdemeanor law that applies to county officials like commissioners and economic development authority members, such as the Requester. These restrictions would prohibit the Requester from being a party to, or having a financial interest in, a contract over which his public positions give him varying degrees of control.

For the reasons below, the Ethics Commission finds that the Requester does not have the requisite “direct authority or control” under the Ethics Act or the requisite “voice, influence, or control” under W. Va. Code § 61-10-15, over the energy development company’s contracts. Therefore, these provisions do not prohibit the Requester’s ownership, officer position, and possible further employment with the energy company.

First, the County Commission and the Economic Development Authority do not appropriate funds to, or contract with, the Requester's energy company. Therefore, there is no public contract to prohibit under the Ethics Act’s prohibited contracts provisions.

Second, as for W. Va. Code § 61-10-15, which provides broader contracting prohibitions than the Ethics Act, the Ethics Commission has consistently stated in past Advisory Opinions, e.g., Advisory Opinion 2018-05, the two factors to consider in whether a county public official may exercise voice, influence, or control over an entity’s employment or business contracts: a county board's 1) power to make appointments to boards or commissions who employ a public official, and/or 2) appropriations of funding to such boards or commissions.

For example, in Advisory Opinion 2021-10, the Ethics Commission held that the power of a county commission to appoint one of 16 board members to a convention and

visitor's bureau (CVB) was insufficient to give a county official voice, influence, or control over an entity's contracts. The Ethics Commission held in Advisory Opinion 2021-10, however, that a county commissioner may not be employed by a CVB based upon the financial interrelationship between the CVB and county commission.

Here, the County Commission and Economic Authority Development do not appoint the energy company's board of directors or give it appropriations. Therefore, W. Va. Code § 61-10-15 is not applicable to the Requester's situation.

Finally, the Ethics Act at, W. Va. Code § 6B-2-5(h), limits the employment of full-time public officials and employees. County commissioners and economic development authority members serve on a part-time basis. Therefore, the employment restrictions in the Ethics Act at subsection (h) do not apply to the Requester.

In conclusion, the Ethics Commission finds that pursuant to the Ethics Act and W. Va. Code § 61-10-15, the Requester may be associated with the energy development company because the County does not appropriate money to the energy company, provide local control over the company, appoint its board members, or otherwise control the company or its anticipated energy project. Therefore, the Requester may serve as a county commissioner and economic development authority member while maintaining his ownership, officer position, and possible future employment with the energy development company.

The Requester is associated with the energy development company for purposes of the Act's voting provision, in subsection (j) above, because he is a "director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class…." Therefore, he would need to recuse himself from voting on matters that may come before the County in which the company has a financial interest.

Finally, the Requester and all other public officials and employees are subject to the prohibitions of using public office for private gain and other provisions in the Act that

may become operative, e.g., misusing confidential information and accepting prohibited gifts. See W. Va. Code § 6B-2-5(b), (c), and (f).

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester should contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid.

This Advisory Opinion is limited to questions arising under the Ethics Act at W.Va. Code §§ 6B-1-1 through 6B-3-11, and W. Va. § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B -2-3, this Opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked or the law is changed.

/s/ Robert J. Wolfe

Robert J. Wolfe, Chairperson
West Virginia Ethics Commission