

Advisory Opinion 2022-09

Issued on March 3, 2022, by

The West Virginia Ethics Commission

Opinion Sought

A **County Commission candidate** asks whether he may continue being employed as the operations manager for a nonprofit county rescue squad if he is elected to the County Commission.

Facts Relied Upon by the Commission

The Requester is the Chief of Operations and the Corporate Director for a County Rescue Squad (“Rescue Squad”). The Rescue Squad is a nonprofit corporation that provides medical transports for citizens.

The Requester states that the Rescue Squad does not receive any county funding. Hence, the county does not appropriate money to the Rescue Squad. The Rescue Squad does not contract with any county agencies. Furthermore, the Rescue Squad does not receive any state, federal, or taxpayer funds and does not employ any county, state, or federal employees.

The Rescue Squad’s Board of Directors consists of nine members. Six members are elected by employees of the Rescue Squad; one member is appointed by a hospital/medical facility’s board of directors; one member is appointed by the County Commission, and one member is appointed by a municipality which is also the county seat. The Rescue Squad’s Board of Directors has a nomination committee which presents a slate of three county residents to the county commission which then selects one of the persons to serve as the County representative on the Rescue Squad’s Board. The same slate process is used for the appointment of the municipal representative.

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 § 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 does not prescribe who is eligible to serve on a public body, but a person who is elected to public office must comply with the restrictions in the law governing interests in public contracts.¹ [Advisory Opinion 2017-22](#) and Advisory Opinion 2022-08.

Both the Ethics Act and W. Va. Code § 61-10-15, a criminal misdemeanor statute that applies to certain county officials and employees, including county commissioners, prohibit the Requester from being a party to, or having a financial interest in, a public contract over which his public position gives him varying degrees of control. The Commission must determine whether the Requester may exercise the requisite “voice, influence, or control” over the Rescue Squad’s employment contracts, under W. Va. Code § 61-10-15, to prohibit him from being employed by the Rescue Squad as its Operations Manager or serving as its Corporate Director while serving as a County Commissioner.² The Ethics Commission has consistently stated in past Advisory Opinions, e.g., [Advisory Opinion 2018-05](#), that two factors to consider in whether a county public official may exercise voice, influence, or control over his or her employment contract are through 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.

The County Commission does not appropriate money to the Rescue Squad or contract with it. Therefore, the only relevant factor to consider is whether the County

¹ The restrictions also apply to public employees.

² The Ethics Act public contract restrictions expressly allow employment by a government body. W. Va. Code § 6B-2-5(d).

Commission's power to appoint one of the Rescue Squad's nine board members constitutes the exercise of voice, influence, or control over the Rescue Squad's employment contracts.

The Ethics Commission has held that a county commissioner may not be employed by (or have contracts with) a county subunit, such as a solid waste authority, an ambulance authority, hospital, public service district, or development authority because the county commission appoints all the members to these boards and has the authority to make contributions to them. See [Advisory Opinion 2013-41](#), [2009-01](#), 1996-23, 1994-30, and 1992-48. In contrast, in Advisory Opinion 1999-26, the Commission held that a Board of Education (BOE) member *was not prohibited* from contracting with a parks commission where the BOE appointed only three of nine of the members of the parks commission board and the BOE's financial contribution was limited. 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).

In the instant case, the County Commission appoints only one of the Rescue Squad's nine members. The Commission finds that the County's appointment power is insufficient to constitute the exercise of voice, influence, or control over the Rescue Squad's employment contracts so as to prohibit the Requester's employment with the Rescue Squad.

In conclusion, the Ethics Commission finds that pursuant to the Ethics Act and W. Va. Code § 61-10-15, a county commissioner may be employed by a rescue squad when the county commission does not appropriate money to it and only appoints one of its nine board members.

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