

Advisory Opinion 2021-18

Issued on August 5, 2021, by

The West Virginia Ethics Commission

Opinion Sought

A **Community and Technical College President** asks whether the College may employ a county commissioner.

Facts Relied Upon by the Commission

The Requester is the President of a Community and Technical College (“Community College” or “College”). Per the West Virginia Code, the Community College’s Board is composed of members appointed by the Governor and representatives selected by the College’s faculty, staff, and students. W. Va. Code § 18B-2A-1.

The Requester states that a county commissioner is an applicant for a position at the College. The county commission on which the county commissioner/job candidate serves does not contract with or appropriate money to the Community College.

Provisions Relied Upon by the Commission

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

(d) *Interests in public contracts.* -- (1) In addition to the provisions of § 61-10-15 of this code, 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 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 provides, in relevant part:

(a) It is unlawful for any member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or 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 a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control

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Advisory Opinion

The Commission must determine whether the Ethics Act, at W. Va. Code §§ 6B-2-5(b) and (d), or W. Va. Code § 61-10-15, prohibits a county commissioner from being employed by the Community College.

Ethics Act

The Ethics Act expressly states, “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(d). The Ethics Act does not, therefore, prohibit a public official or employee from being employed with another public body. In applying this rule of law, the Ethics Commission held in Advisory Opinion 2019-21 that a state employee may simultaneously serve as a part-time elected mayor. The Opinion notes that elected officials must perform their elected official duties on their own time and not during their public work hours unless they take annual or unpaid leave.

The Ethics Commission holds that, pursuant to the Ethics Act, a county commissioner may be employed by a community and technical college.

W. Va. Code § 61-10-15

County commissioners are also subject to the strict limitations in W. Va. Code § 61-10-15 which prohibits county officials from having an interest in contracts over which they exercise voice, influence, or control. The West Virginia Supreme Court of Appeals determined in *Cimino v. Board of Education*, 158 W. Va. 267, 210 S.E.2d 485 (1974), that the prohibitions in W. Va. Code § 61-10-15 are equally applicable to employment contracts.

The 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.

In Advisory Opinion 2018-05, the Ethics Commission held that a board of education (“BOE”) candidate, if elected, would not have sufficient voice, influence, or control over her employment contract with West Virginia University Extension Service (“WVU Extension”) to prohibit her employment with WVU Extension given the BOE’s limited

appropriations to WVU Extension and the BOE member's lack of power to make appointments to her local extension service committee.

In Advisory Opinion 2014-23, the Commission ruled that county commissioners or their spouses may be employed by a county board of education although, at times, the county commission gave the BOE money for special projects.

In the instant situation, the county commission does not appropriate money to the Community College. Further, per the West Virginia Code, county commissions do not have authority to appoint community college board members because that authority belongs to the Governor and a community college's faculty, staff, and students.

Based upon the foregoing, the Ethics Commission finds that there is no prohibition in W. Va. Code § 61-10-15 against the County Commissioner being employed by the Community College because the County Commission on which he serves does not appropriate money to the Community College and County Commissions do not have authority to appoint community college board members.

In conclusion, pursuant to the Ethics Act and W. Va. Code § 61-10-15, the Community College may employ the County Commissioner. The County Commissioner must perform his County Commission duties on his own time and may not be unlawfully favored in the hiring process.

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must 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, W. Va. Code §§ 6B-1-1 through 6B-3-11, and W. Va. Code § 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 public servants and other persons unless and until it is amended or revoked or the law is changed.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
WV Ethics Commission