



**WEST VIRGINIA ETHICS COMMISSION
PUBLIC CONTRACT PROVISIONS GOVERNING
COUNTY OFFICIALS AND COUNTY SCHOOL SYSTEMS
W. Va. Code § 61-10-15**

History and Purpose of Statute

West Virginia Code § 61-10-15 was enacted in 1879. The West Virginia Supreme Court has held: “The purpose of the statute is to protect public funds, and give official recognition to the fact that a person cannot properly represent the public in transacting business with himself. To permit such conduct would open the door to fraud. The statute is designed to remove from public officers any and all temptation for personal advantage.” Alexander v. Ritchie, 132 W. Va. 865, 871, 53 S.E.2d 735, 739 (1949).

Who is subject to this code section?

This code section applies to county officers, including all elected and appointed county officials. Examples include County Commissioners, County Clerks, Appointed Members of Public Service Districts (PSD), and Appointed Members of County Parks and Recreation Boards. It also applies to School Board Members and county school employees.

What does this statute prohibit?

It strictly prohibits, with limited exceptions, county officials and persons in the county school systems from having an interest in public contracts over which they exercise voice, influence or control. It also contains strict anti-nepotism provisions. For example, a County Commissioner’s spouse may not be employed by county government.

What does it mean to exercise voice, influence or control?

Exercising voice, influence or control over a public contract includes, but is not limited to, the power to approve an agency's budget or to appoint its board members. For example, the Supreme Court ruled in State v. Neary, 179 W.Va. 115, 365 S.E.2d 395 (1987), that the powers which the County Commission exercised over the PSD, including the authority to appoint and remove members of the PSD, constituted the exercise of voice, influence or control over PSD public contracts; hence, a member of a County Commission could not privately contract with the local PSD. The Court further held that the law does not require the showing of an actual exercise of influence, but that a violation of the 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. Exercising control over a contract includes, without limitation, drafting bid specifications or requests for proposals, recommending the selection of a vendor, or approving the method or manner of payment to a vendor. For more information on what constitutes control, see the Ethics Commission's Guideline entitled "Prohibited Interests in a Public Contract."

What are some examples of prohibited contracts?

Some examples of prohibited contracts are: (1) a County Prosecutor may not contract with a local extension service agency since his prosecutorial duties give him voice, influence and control over this agency's contracts (A.O. 2009-05); (2) An appointed member of a Solid Waste Authority (SWA) may only be considered for employment by the SWA if he or she first resigns his or her position as an SWA Member and all qualified candidates are given equal consideration (A.O. 99-31); (3) A County Commission may not purchase property from an appointed member of the County Building Commission (A.O. 2012-16) and/or lease property from the Prosecuting Attorney (A.O. 2006-11); and (4) Appointed Members of a County Authority and their immediate family members may not bid on a building being sold by the Authority at a public auction (A.O. 2010-10).

What is the Ethics Commission's authority over W. Va. Code § 61-10-15?

Although the Ethics Commission has the authority to interpret W. Va. Code § 61-10-15, it does **not** have the power to enforce the provision. It is a criminal misdemeanor statute which only a county prosecuting attorney or a special prosecutor may prosecute.

Does § 61-10-15 govern nepotism?

As set forth above, this statute contains strict anti-nepotism provisions. The statute does, however, contain certain exceptions. For example, a School Board Member's spouse may be employed as a teacher in the county school system. Still, persons covered by this section should seek advice from the Ethics Commission if they have questions regarding whether a certain employment situation is prohibited. See *also* booklet entitled "A Guide to the West Virginia Ethics Act" and advisory opinions interpreting this code provision, which may be viewed on the Ethics Commission's website, www.ethics.wv.gov.

What are the penalties if I violate § 61-10-15?

Any person who violates this statute is guilty of a criminal misdemeanor and, upon conviction therein, shall be fined not less than \$50 or more than \$500, or confined in jail not more than one year, or fined and confined. Additionally, any person convicted shall be removed from office. Any teachers, principals, supervisors or superintendents so convicted shall have their teaching certifications revoked.

Are there exceptions?

There are limited exceptions to the prohibitions in this code provision. For example, the restrictions do not apply to persons who have a pecuniary interest in a bank within the county which serves as a depository for county funds, or any person who has an interest in a public utility which is subject to regulation by the Public Service Commission. The statute also allows the employment of a County Commissioner's wife at a county owned hospital.

County Officials or School Boards adversely affected by the prohibitions in this section may seek a contract exemption. Contract exemptions are granted upon proof that the prohibition will result in excessive cost, undue hardship or otherwise substantially interfere with the operation of a county agency or county school system. For example, in Contract Exemption 2010-07, a Board of Education was granted an exemption to purchase property in which an assistant prosecuting attorney had an ownership interest. For more information about obtaining a contract exemption. See Guideline, "How to Seek a Contract Exemption". The WV Ethics Commission does not, however, have the authority to grant a contract exemption for an employment contract, only other financial transactions.