

ADVISORY OPINION NO. 92-11

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 2, 1992

GOVERNMENTAL BODY SEEKING OPINION

A Candidate for a County Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act for the candidate, if elected, to serve on a County Board of Education when his spouse is an employee of the Board?

FACTS RELIED UPON BY THE COMMISSION

The requestor is a candidate for election to a County Board of Education. His spouse, originally a teacher, has been employed by the County Board of Education in the position of Special Education Director for the past four years. She is assigned to the Central Board office and is not required to perform teaching duties.

The spouse has a continuous contract with the County Board of Education and salary and raises which the spouse receives are based on the same rate as those given to the teachers in the County with identical experience and education. The spouse receives incremental raises and benefits adjustments when the County Board of Education provides them to all County teachers. In addition, the spouse receives one hundred seventy-five dollars (\$175.00) per month added compensation as a central office administrator.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected public official...or member of his...immediate family...may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he...may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of a county board...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service...which as such member he may have any voice, influence or control: Provided, however, That nothing herein shall be construed to prevent or make unlawful the

employment of the spouse of any such member as...a teacher, auxiliary or service employee in the public schools of any county.

ADVISORY OPINION

In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit the requestor from seeking election to the County Board of Education.

If the requestor is successful in his bid to seek election to the County Board of Education, he will be subject to the provisions established in the Ethics Act. However, the requestor's service on the Board simultaneous with his wife's employment by the Board would not, per se, constitute a violation of the Ethics Act.

Public Contracts

Pursuant to WV Code §6B-2-5(d)(1) no public official or a member of his or her immediate family may be a party to or have more than a limited interest in the profits or benefits of a public contract over which the public official has direct authority or control. The requestor, if elected, would have direct authority and control over all public contracts, including employment contracts, entered into by the County Board of Education.

However, the Commission notes that WV Code §6B-2-5(d)(1) specifically provides that nothing contained within that subsection shall be construed to prevent or make unlawful the employment of any person with any governmental body.

Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for the requestor to serve on the County Board of Education when his spouse is an employee of the Board.

Voting

The requestor, if elected, should be mindful of WV Code §6B-1-2(c) which provides that certain conflicts of interest are inherent in part-time service and a public official should not vote on a matter which becomes personal to him. The Commission considers a matter to be "personal" when the public official has any direct or indirect pecuniary interest in the matter, is affected in a manner which may influence his vote, or would give the appearance of impropriety. The Commission has determined that in order for a public official's recusal to be effective he must disclose his interest and physically remove himself from the room during the discussion and decision making process.

In Advisory Opinion #91-41 the Commission determined that the voting prohibition contained in WV Code §6B-1-2(c) does not apply to actions which involve the creation of laws, rules, regulations or policies which affect the public official's or family member's financial interests **as a member of a class**. There is no conflict of interest if the public official or family member is not pecuniarily affected to a greater extent than any other member of the profession, occupation, group or class.

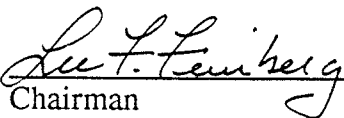
Therefore, the Commission finds that if the requestor is elected to the County Board of Education, he should not vote on any matter that may specifically and uniquely affect his spouse to a greater extent than other comparable School Board employees.

West Virginia Code §61-10-15

West Virginia Code §61-10-15 provides that it is unlawful for any member of a county board to be or become pecuniarily interested, directly or indirectly, in the proceeds of any public contract over which such member may have any voice, influence or control. This statute specifically provides that nothing contained within it shall be construed to prevent the employment of the spouse of any such member as principal or teacher, auxiliary or service employee in the public schools of any county. In this case, however, the requestor's spouse serves as a central office administrator rather than as a teacher and does not fall within the protection of this proviso. See W.Va. Education Assn. v. Preston County Bd. of Education, 297 S.E.2d, 444 (1982).

Further, although the employment contract between the requestor's spouse and the County Board of Education was entered into four years ago, the requestor may have voice, influence or control over the renewal, modification or enforcement of this particular employment contract. Such a situation would give rise to a potential violation of WV Code §61-10-15.

Although the employment contract between the requestor's spouse and the County Board of Education was entered into four years ago, previous court opinions construing WV Code §61-10-15 require that the Commission find that any future renewal, modification or enforcement of this particular employment contract by the County Board of Education while the requestor is a Board member would give rise to a potential violation of WV Code §61-10-15 by all members of the Board of Education.


Chairman