

ADVISORY OPINION NO. 93-04

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 4, 1993

GOVERNMENTAL BODY SEEKING OPINION

A Candidate for a position on a County Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act or West Virginia Code §61-10-15 for the requestor to seek a position on a County Board of Education while being employed by a private corporation which conducts business with that Board?

FACTS RELIED UPON BY THE COMMISSION

The requestor, seeking a position on a County School Board, is currently an employee of a University Department of Behavioral Medicine and Psychiatry but is not considered a State employee since all wages received come from a private organization. The requestor works as a psychometrician directly under a neuropsychologist who does consulting work for this County School System.

After the Neuropsychologist receives a referral from the School System, it is the requestor's responsibility to run a battery of tests which are used in the placement of children with suspected cognitive disabilities from head injuries. The County School System is billed for the services rendered and payment is made to the private organization. The requestor does not receive any money directly from the County School System and the requestor's salary is not affected by the testing of the children.

During the course of a year the requestor tests between three hundred and four hundred children, teenagers, and adults. The requestor tests between ten and twenty students from the county which has the open position on the School Board.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §61-10-15 states in pertinent part that...it shall be unlawful for any member of a county or district board...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

The Ethics Act

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 no provision of the Ethics Act per se prohibits the requestor from seeking a position on a County Board of Education even while employed by a private corporation which conducts business with that Board.

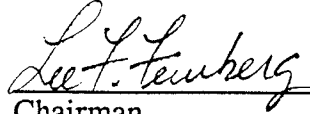
WV Code §61-10-15

West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he or she may have voice, influence or control over the letting of such contract. Any person who violates this provision is guilty of a misdemeanor and is subject to removal from office. The West Virginia Supreme Court, interpreting WV Code §61-10-15, has held that a public official has voice, influence or control over a public contract simply by virtue of his public position. State v. Neary, 365 S.E. 2d 395 (1988).

The requestor is employed by a private organization which contracts with the County Board of Education to provide neuropsychological testing of children with suspected cognitive disabilities from head injuries. The requestor would like to seek a position on that county's School Board. However, the Court, in Summers County Citizens League, Inc. v. Tassos, 367 S.E.2d 209 (WV 1988) held that a county officer is "pecuniarily interested, directly or indirectly, in the proceeds of any contract or service" where the county officer is an **employee** of a private entity which is the other party to the contract with the county, whether or not the county officer is also a shareholder, director, or officer of such private entity. Therefore, the requestor is not insulated from the sanctions of WV Code §61-10-15 merely because of employee status with the private entity.

Further, the Court, in Fisher v. Jackson, 107 W.Va. 138. 147 S.E. 541 (1929) held that the recusal of a public official from voting on a particular matter in which he has a direct or indirect pecuniary interest was not sufficient to immunize that official from the sanctions now contained in WV Code §61-10-15. West Virginia Code §61-10-15 sanctions the mere existence of a pecuniary interest, thus the requestor may not obtain protection from the sanctions of the statute by abstaining from voting on any issues which affect the requestor's private employer.

As a practical matter, the requestor may not serve on the county Board of Education since it would be a violation of WV Code §61-10-15 for the Board to act upon a contract with a private corporation which simultaneously employs one or more members of that Board. This violation would apply to all members who participate in any vote or action regarding such contract.


Chairman