

ADVISORY OPINION NO. 93-21

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 3, 1993

GOVERNMENTAL OFFICIAL SEEKING OPINION

Director of a County Vocational School

OPINION SOUGHT

Is it a violation of the Ethics Act for the Director of a Vocational School, or a general contractor acting on his behalf, to enter into a contract committing students from the School to work on a house being constructed for the requestor's personal use?

FACTS RELIED UPON BY THE COMMISSION

The requestor is the Director of a public Vocational School which serves several counties. The school has an adult education program in framing. As part of this class, the students go out into the community and frame houses for contractors who wish to use their services. Although the students take longer to complete such work, contractors pay a market rate per foot for their services.

A School instructor identifies contractors which are willing to use the students on construction jobs. The School, through the Director, then enters into contracts with those contractors. Pursuant to the terms of the contract, the contractor agrees to furnish all materials and supervise the students while the school agrees to furnish the students' labor. The students do not personally receive any of the monies paid under these contracts. Rather, the School receives the money and uses it to purchase tools and to provide financial assistance to students.

The Director of the public Vocational School is in the process of building a new home for his family. He has retained a general contractor who wants to subcontract the framing portion of the project to the Vocational School.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...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 such official or employee may have direct authority to enter into, or over which he or she may have control.

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any ...supervisor or superintendent, principal or teacher of public schools...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 ...supervisor, superintendent, principal, or teacher, he may have any voice, influence or control.

ADVISORY OPINION

Public Contract

Pursuant to WV Code §6B-2-5(d)(1) a public official or employee may not have more than a limited interest in the profits or benefits of a public contract over which he may have direct authority or control.

As the Director of the Vocational School, the requestor is authorized to enter into and execute contracts between private contractors and the public Vocational School. These contracts commit the School's students to work on particular projects at specific rates. Clearly, the requestor has direct authority and control over such contracts.

Furthermore, although under the facts presented a general contractor would be the private party actually entering into the contract with the School, the requestor has more than a limited interest in the terms and benefits of such contract since the requestor is the employer of the contractor. Ultimately the students of the Vocational School would be working for the Director of the School on his home.

Therefore, it would be a violation of WV Code §6B-2-5(d)(1) for the Director of the Vocational School, or a general contractor acting on his behalf, to enter into a contract committing students from the Vocational School to work on a house being built for the Director's personal use.

West Virginia Code §61-10-15

West Virginia Code §61-10-15 provides that it is a criminal violation for a supervisor, superintendent, principal or teacher of public schools to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he or she has voice, influence or control over the award of such contract or service. Any person who violates this provision is guilty of a misdemeanor and subject to removal from office.

The requestor is the Director of a public Vocational School and as such falls within the purview of WV Code §61-10-15. In addition, since the Director executes and administers contracts for framing services on behalf of the School, the requestor clearly has voice, influence and control over public contracts as regulated by WV Code §61-10-15. Further, it is apparent that the Director has an indirect pecuniary interest in a specific contract between the School and the general contractor since this contractor has been retained by the Director to construct his personal residence and would be subcontracting the services of the School's students to assist in this job.

Therefore, it would be a violation of WV Code §61-10-15 for the Director to execute a contract on behalf of the Vocational School which would allow the School's students to subcontract with a general contractor to perform the task of framing the Director's home.

Lee F. Fenberg
Chairman