

ADVISORY OPINION NO. 95-54

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1996

PUBLIC SERVANT SEEKING OPINION

Treasurer/Business Manager for a Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 for the spouse of a Treasurer/Business Manager of a County Board of Education to sell school supplies to that Board of Education?

FACTS RELIED UPON BY THE COMMISSION

The requester is the Treasurer/Business Manager for a County Board of Education. In that capacity he is responsible for all the business affairs of the school system, including the supervision of the purchasing director. He exercises no control or influence on purchasing decisions, but does control, in concert with the Board of Education, the procedures and practices which the purchasing department must follow.

The requester's wife is employed as a saleswoman for a company that sells school supplies. She is an employee of that company with no ownership interest in it.

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 member of a county commission...or any member of any other county or district board, or for any county or district officer 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

Pursuant to WV Code 6B-2-5(d)(1), a public servant or member of his immediate family may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. For the purposes of this subsection "limited interest" is defined as an interest not exceeding ten percent of a company or thirty thousand dollars interest in the profits or benefits of the contract.

As Treasurer/Business Manager of the County Board of Education, the requester would have control over the procedures and practices which the purchasing department must follow when purchasing school supplies from his wife's employer. However, the Commission has previously determined that mere **employees** of companies involved in public contracts have only a limited interest in such contracts.

Therefore, it would not be a violation of WV Code 6B-2-5(d)(1) for the County Board of Education to purchase school supplies from a company employing the requester's wife as a salesperson. **However, this is academic in light of the prohibition against all pecuniary interest in public contracts established in WV 61-10-15 and discussed below.**

WV Code 61-10-15

As previously noted, the requester is the Treasurer/Business Manager for a County Board of Education. In that capacity he is responsible for all the business affairs of the school system, including the procedures and practices which the purchasing department must follow. The requester's wife is employed as a saleswoman for a company that sells school supplies.

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract. As a Treasurer/Business Manager for a Board of Education the requester is considered to be a county officer and falls within the scope of this statute.

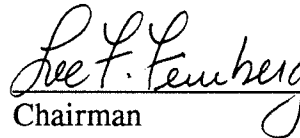
West Virginia Code 61-10-15 applies a different, stricter standard to the degree of control a public official is permitted to have over a public contract in which he also has a private financial interest. The Commission finds that the requester's power to oversee the business affairs of the school system, including the supervision of the purchasing director and the procedures and practices which the purchasing department must follow, is sufficient to give him voice and influence, if not actual control, over the decision to purchase supplies from his wife's employer. Consequently, the requester's position as a Treasurer/Business Manager for the board of Education does give him the degree of influence contemplated by WV Code 61-10-15.

Further, the Supreme Court of Appeals has held under WV Code 61-10-15 that a member of a school board has a pecuniary interest even if he is only an **employee** of the private entity which is the other party to the contract. See Summers County Citizens League, Inc. v. Tassos, 367 S.E.2d 209 (1988). Consequently, the requester is not insulated from the sanctions of WV Code 61-10-15 merely because of his spouse's employee status with the private company.

Therefore, it would be a violation of WV Code 61-10-15 if the requester's wife sold school supplies to his school system. The Commission notes that it is without authority to grant exemptions to WV Code 61-10-15 and that any person who violates this section is guilty of a misdemeanor and subject to removal from office.

The Commission also cautions that this opinion is limited to an examination of how the Ethics Act and WV Code 61-10-15 apply to the facts provided. The Commission is without authority to determine whether the arrangement described herein would be a violation of WV Const. Art. XII, §9 which provides, in pertinent part, that "[n]o person connected with the free school system of the State...shall be interested in the sale, proceeds or profits of any book or other thing used, or to be used therein, under such penalties as may be prescribed by law..."

Finally, the Commission notes that the West Virginia Supreme Court held, in Hunt v. Allen, 53 S.E.2d 509, that County Board Members who voted to pay for goods known to have been sold to the Board in violation of WV Code 61-10-15, were guilty of misconduct and subject to removal from office, even though they had no personal financial interests in the purchases.


Chairman