

ADVISORY OPINION NO. 98-04

Issued on March 5, 1998 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

School Superintendent

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 if a Director of Special Services provides homebound instruction outside of the regular workday?

FACTS RELIED UPON BY THE COMMISSION

The Director of Special Services is a central office administrator with a County Board of Education. In that position she supervises the provision of educational services to homebound children. This responsibility includes determining who needs the services and what specific services are needed by each child. She is also responsible for contracting with the teachers to provide homebound instruction.

The Director is currently paid extra monies to provide homebound instruction to a student after her regular workday. The Board of Education has directed the Superintendent to determine whether such an arrangement violates either the Ethics Act or WV Code 61-10-15.

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: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...district school officer...supervisor or superintendent, principal or teacher of public schools, 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

The Ethics Act does not prevent a public servant from having an additional employment contract with his or her governmental entity. However, the Act does prohibit public servants from using their position for their own private gain.

It is the Commission's view that even though the Ethics Act does not prohibit the Director of Special Services from having a contract to provide homebound instruction outside the regular workday, the need for such a contract with the Director of Special Services should be decided upon by someone not subordinate to the Director.

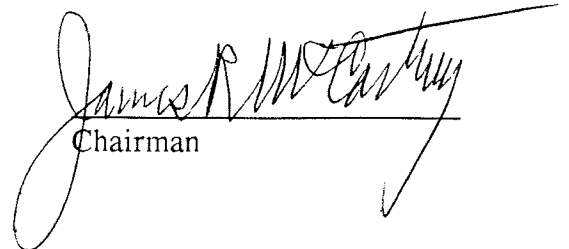
Although the Ethics Act does not preclude the existence of an after hours employment contract for the Director of Special Services if the contract is evaluated and assigned by someone other than the Director herself, this finding may be moot in light of the Commission's ruling below regarding WV Code 61-10-15.

West Virginia Code 61-10-15

West Virginia Code 61-10-15 provides that it is a criminal violation for any school supervisor to have a direct or indirect financial interest in the proceeds of any contract if she has voice, influence or control over the letting of such contract.

The Director of Special Services has direct voice, influence and control over contracts to provide homebound instruction to deserving students since she identifies eligible children, decides upon the services that will be provided, and supervises those teachers working in that program. Therefore, it would be a violation of WV Code 61-10-15 if the Director assigns herself a child to teach at home after her regular school workday.

The Supreme Court of Appeals, at *Fisher v. Jackson*, 107 W.Va. 138, 147 S.E. 541 (1929), held that recusal of a public official from taking part in deciding a particular matter in which he had a direct or indirect interest was not sufficient to immunize that official from the sanctions now contained in WV Code 61-10-15. Therefore, it is the Commission's opinion that WV Code 61-10-15 would be violated even if another supervisor assigned the Director of Special Services a homebound contract to be performed after her regular work day.


Chairman