

ADVISORY OPINION NO. 2000-01

Issued On February 3, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education Member** asks if the County may purchase books from a business by which she is employed part-time.

FACTS RELIED UPON BY THE COMMISSION

The Board Member works approximately 30 hours a week as a clerk in a national bookseller's local store. The Member is paid by the hour and receives no commission on book sales. Neither the Member nor any member of her family have an ownership interest in the business.

The County's public school teachers and librarians would like to make occasional purchases from the store which employs the Board Member. Some of these purchases would be approved by the Board and paid by the central office with public funds; others would be paid for by teachers with funds raised by the schools through fund-raising activities and vending machines.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 61-10-15 states in part that ... It shall be unlawful for any member... of any ... county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such member he may have any voice, influence or control ...

WV Code 6B-2-5(d)(1) provides in pertinent part that ... no elected or appointed 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 ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control...

ADVISORY OPINION

Both the Ethics Act and WV Code 61-10-15 prohibit public servants from having a direct or indirect financial interest in a public contract, purchase or sale over which their public positions give them control. WV Code 61-10-15 is a criminal misdemeanor statute which applies only to certain county personnel, including the members of county Boards of Education.

The Ethics Act's prohibition applies not just to public servants, but also to their spouses and the businesses in which they, or their spouses, have an ownership interest of more than ten per cent. WV

Code 61-10-15 goes beyond the coverage of the Ethics Act to include any business with which public servants or their spouses are associated as owners or employees.

It would not be a violation of the Ethics Act for a county Board of Education to transact business with a company that employed a Board member, so long as the Board member didn't have an ownership interest of more than ten per cent in the company and took no part in the Board's action. It would be a violation of WV Code 61-10-15 for the Board to transact business with a Board member's employer, even if the member had no ownership interest in the company at all - even if the member took no part in the Board's action.

Fifty years ago the WV Supreme Court of Appeals explained the policy considerations on which WV Code 61-10-15 is based:

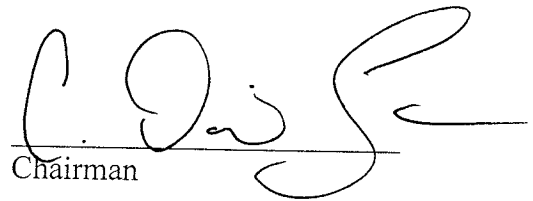
“Membership of a board of education is a matter of high public trust charged with the most sacred governmental duty known to us. The office should be filled by persons of the highest character procurable and our Legislature has undertaken to throw safeguards around that office in order that the discharge of its high responsibilities shall be jeopardized as little as possible. Code, 61-10-15, is one of those safeguards. It forbids a pecuniary interest by a member of the board of education in any contract with the board. As we have already pointed out, it goes far beyond imposing a penalty upon actual corruption. It recognizes as a matter of public policy that a pecuniary interest might, and in many instances would, subject members of board of education to harmful suspicion of corruption and that in some instances there would be created a borderland where the distinction between honesty and corruption would not be pronounced. Wishing to avoid discriminations that might result from considering the question of degree, our Legislature very wisely forbade members of boards of education from having a pecuniary interest directly or indirectly in any sort of contract with a board of education of which they were a member, providing that it should be a criminal offense [and an impeachable offense] to do so.” Hunt v. Allen 53 S.E.2d 509 (WV 1948)

The WV Supreme Court of Appeals has ruled that employees have an indirect financial interest in the contracts of their employers. In Summers County Citizens League v. Tasso, 367 S.E.2d 209 (WV 1988), the Supreme Court ruled that it would be a violation for a school board to do business with a company which employed a school board member.

Even where their financial interest in Board business with their employer is negligible, their interest in the financial health of their employer is substantial and confronts Board members with the type of divided loyalty that WV Code 61-10-15 was created to avoid. Those who are responsible for spending public funds should not have to take into account their own financial interests, or those of their employers, when deciding where and how to spend public funds.

Therefore, the Commission finds that it would be a violation of WV Code 61-10-15 for the Board to buy books from the business by which one of its members is employed part-time. This ruling applies to purchases approved by the Board and paid for with public funds.

However, the Commission finds that WV Code 61-10-15 does not apply to purchases made by teachers with proceeds from fund-raising activities and school vending machine sales, because the Board does not control the expenditure of those funds. Such purchases would not be a violation.



Chairman