

NP

## **ADVISORY OPINION NO. 2004-08**

**Issued On May 6, 2004 By The**

### **WEST VIRGINIA ETHICS COMMISSION**

#### **OPINION SOUGHT**

A County School Superintendent asks if the Board of Education can lease property to a credit union in which he holds a small financial interest.

#### **FACTS RELIED UPON BY THE COMMISSION**

The Board of Education is considering leasing space in a school building to a credit union. The credit union will provide similar financial services as a bank which currently leases the space, as well as continue participation in a finance curriculum for high school students.

The County School Superintendent is one of 18,000 members in this credit union, which operates as a private, non-profit corporation. Each member has equal ownership and voice in the operation of the corporation, without regard to their loans or deposits. The Superintendent also serves, without compensation, on the supervisory committee, which essentially functions as the auditing committee for the business. Supervisory committee members have no voting rights with respect to credit union management or decisions.

#### **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(d)(1) provides 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 Section 61-10-15 states in pertinent part that . . . It shall be unlawful for any member of any county 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.

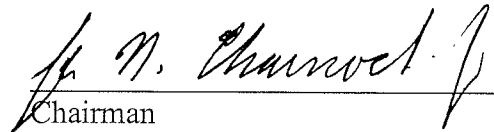
#### **ADVISORY OPINION**

Both the Ethics Act and WV Code 61-10-15 prohibit public servants from having a personal financial interest in a public contract, purchase or sale over which their public position gives them control. As the County Superintendent of Schools, the requester is considered to have control over his school systems' financial transactions. Therefore, he is precluded from having a personal financial interest in such transactions.

However, in Jordan v. McCourt, 62. S.E.2d 555 (1950), the West Virginia Supreme Court of Appeals determined that there are certain instances where someone's pecuniary interest in a public contract is so small as to be deemed *de minimis*. Thus, while a technical violation of W. Va. Code § 61-10-15 may exist, it is not the type of pecuniary interest which triggers the sanctions of W. Va. Code § 61-10-15.

In this case, the Commission considers the Superintendent's interest in the credit union's lease to be *de minimis*. It is not a violation of the Ethics Act or W. Va. Code § 61-10-15 for the Board of Education to lease space in a school building to a credit union where the Superintendent is a member and serves as an uncompensated volunteer on its supervising committee.

This decision is based on the particular facts and circumstances of this request and may not be relied upon by others. The Commission will continue to decide whether a pecuniary interest in a particular matter is *de minimis* on a case-by-case basis.

  
Chairman