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STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

July 14, 1988

The Honorable Loren B. Howley
Prosecuting Attorney for Calhoun County
Calhoun County Courthouse
P. O. Box 337
Grantsville, West Virginia 26147

Dear Ms. Howley:

We are in receipt of your letters dated February 18, 1988, and March 7, 1988. In your letters, you relayed a factual situation concerning the Mt. Zion Public Service District (hereinafter sometimes referred to as "PSD"). You indicated that the chairman and the two additional board members of the PSD receive "fifty dollars per attendance at regular monthly meetings" in accordance with W. Va. Code § 16-13A-4. In addition to the statutorily prescribed salaries, the chairman reads water meters, and is compensated at the rate of six dollars per hour. Another board member was appointed as the secretary for the PSD and receives two hundred forty dollars per month for his services as secretary. The third and final board member was appointed treasurer for the PSD and receives two hundred sixty dollars per month for his services as treasurer.

In your first letter, you asked the following question:

"Is it legal for the members of the Board of the Mt. Zion Public Service District to receive compensation for services performed for the Public Service District, as well as fees as Board members and officers?"

In your second letter, you stated the following:

"It would be appreciated if your office could give us an opinion to the legality of board members of a public service board receiving compensation for work and services performed for the board above and beyond the compensation of their service as a board member,

more particularly, for services as a secretary, treasurer, and meter reader."

This is our response, and it is intended to answer both questions.

Code 16-13A-3 states, in pertinent part:

"Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district, nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after such board member's term has expired or such board member has resigned from the district board. * * *"

* * *

"The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chairman and by appointing a secretary and a treasurer who need not be members of the board. * * * The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. * * *"

The language of the statute seems to be somewhat self-contradicting as you noted in your letters. Board members cannot have a pecuniary interest in "the proceeds of any contract or service, or in the furnishing of any supplies or materials to the district." However, the same statute implies by its language that a board member may be the district's secretary or treasurer or both and said secretary and treasurer "shall receive salaries."

Even though the language of Code 16-13A-3 seems self-contradicting, Code 61-10-15 is quite clear and unambiguous. It reads, in pertinent part:

"It shall be unlawful for any member of a county commission, overseer of the poor, district school officer, secretary of a board of education, 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, officer, secretary, supervisor, superintendent, principal, or teacher, he may have any voice, influence or control * * *." (Emphasis added.)

The salaries paid to board members for serving as board members is not to exceed nine hundred dollars annually and is controlled by statute. Code 16-13A-4. The board member shall have the discretion to prescribe the amount of the treasurer's and secretary's salaries. Code 16-13A-3. If a board member is also the secretary and/or treasurer, he finds himself in the unacceptable position of having a "voice, influence or control" of proceeds for which he has a direct pecuniary interest. The situation is the same if the board determines the wage rate to be paid the meter reader for the PSD and a board member then also becomes a meter reader for the PSD.

The West Virginia Supreme Court of Appeals summarized the purposes of Code 61-10-15 in Syllabus Point 1 of State v. Neary, No. 17303 (W. Va. Dec. 21, 1987), and again in Syllabus Point 3 of Summers County Citizens League, Inc., et al. v. Tassos, et al., No. 17912 (W. Va. Mar. 4, 1988). The Court wrote the following:

"The public policy of this State, as evidenced by W. Va. Code, 61-10-15, as amended, is not directed against actual fraud or collusion, but is for the purpose of preventing those acts and eliminating any opportunity therefor. The purpose of the statute is to protect public funds, and give official recognition to the fact that a person cannot properly represent the public in transacting business with himself."

It is our opinion, therefore, that board members of the Mt. Zion Public Service District cannot be compensated for performing the duties of treasurer and/or secretary for the Mt. Zion


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Public Service District. Furthermore, a board member may not be compensated for reading meters for the Mt. Zion Public Service District.

Very truly yours,

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RDW:pk