



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

MARIO J. PALUMBO  
ATTORNEY GENERAL

RICHARD L. GOTTLIEB  
CHIEF DEPUTY ATTORNEY GENERAL

(304) 348-2021  
FAX 348-0140

November 10, 1992

The Honorable Gaston Caperton  
Governor of West Virginia  
Office of the Governor  
State Capitol  
Charleston, West Virginia 25305

Dear Governor Caperton:

This is in response to your letter requesting our opinion concerning the proposed award to B.J.W. Printing Company of the printing services contract for the House of Delegates. Your letter relies on facts communicated to you by the Speaker of the House of Delegates which may be summarized as follows:

West Virginia Code § 5A-3-26 and the Constitution of West Virginia, Article VI, Section 34, both require that a contract for legislative printing be awarded to the "lowest responsible bidder." With respect to the contract in question, the two lowest bids were received from Jarrett Printing Company and B.J.W. Printing Company, the Jarrett bid being slightly lower than the B.J.W. bid. Both companies are considered by all concerned to be "responsible bidders." Therefore, without question, the printing contract would have been awarded to Jarrett Printing Company but for the fact that Delegate Martha Walker (who is now a State Senator-elect) is the spouse of Jerry Walker who, in turn, is the sole stockholder of Jarrett Printing Company. Article VI, Section 34 of the West Virginia Constitution states that "no member or officer [of the Legislature], or officer of the State, shall be interested, directly or indirectly, in such [printing] contract . . . ."<sup>1</sup>

---

<sup>1</sup>The full text of West Virginia Constitution, Article VI, Section 34, is as follows:

The legislature shall provide by law that the fuel, stationery and printing paper, furnished for the use of the State; the copying, printing, binding and distributing the laws and journals; and all other

In anticipation of your duty, as set forth in W. Va. Const., art. VI, § 34, to approve or disapprove of any legislative printing contract, you have inquired as follows:

Is Delegate Walker interested, either directly or indirectly, in the referenced [Jarrett Printing Company] contract within the meaning of Article VI, Section 34 of the Constitution of West Virginia?

Delegate Walker's integrity is not at issue. She had no role in the bidding or contracting discussions, nor has she in any manner attempted to influence the process.<sup>2</sup> Indeed, we are informed that an opinion by the West Virginia Ethics Commission opined that she has no conflict of interest under our Governmental Ethics Act. Thus, while there is no suggestion of any impropriety on her part, or on the part of Jarrett Printing Company, the question remains as to whether she has an "indirect interest" in the contract such as is prohibited by the quoted constitutional provision.

Thus, the question to which we are confined is whether the spouse of the owner of a printing business, who has no other relationship to said business, is directly or indirectly interested in the company's contracts.

Although there are no published decisions construing the phrase "interested, directly or indirectly, in such a contract" in the context of West Virginia Constitution, Article VI, Section 34, there is a substantial body of case law interpreting nearly identical language in W. Va. Code § 61-10-15, which prohibits school and county officers from being "pecuniarily interested, directly or indirectly, in the proceeds of any contract" over which

---

printing ordered by the legislature, shall be let by contract to the lowest responsible bidder, bidding under a maximum price to be fixed by the legislature; and no member or officer thereof, or officer of the State, shall be interested, directly or indirectly, in such contract, but all such contracts shall be subject to the approval of the governor, and in case of his disapproval of any such contract, there shall be a reletting of the same in such manner as may be prescribed by law.

<sup>2</sup>West Virginia Code § 5A-3-26 places responsibility for letting on bids all contracts for legislative printing with the Director of Finance and Administration, subject to the approval of the Governor.

"he may have any voice, influence or control." We find these decisions to be helpful in light of the similarity of the language used, and because W. Va. Code § 61-10-15 also implements a constitutional provision, Article XII, Section 7, which prohibits persons "connected with the free school system of the state" from being "interested in the sale, proceeds or profits of any book or thing used, or to be used therein . . ." See 49 Op. Att'y Gen. 260 (1961). Further, the rules governing statutory construction generally apply equally to the construction of constitutional provisions. Diamond v. Parkersburg-Aetna Corp., 146 W. Va. 543, 122 S.E.2d 436 (1961); State ex rel. City of Princeton v. Buckner, 180 W. Va. 457, 377 S.E.2d 139 (1988).

We think the public policy of West Virginia Constitution, Article VI, Section 34, is the same policy implemented by W. Va. Code § 61-10-15, as expressed in Syl. Pt. 1 of State v. Neary, 179 W. Va. 115, 365 S.E.2d 395 (1987):

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.

Thus, the fact that Delegate Walker was not involved in the bidding process, and did not intervene in any respect in the decision as to whom the printing contract should be awarded, is irrelevant to the question of whether or not she has a prohibited interest in the contract. For instance, in Hunt v. Allen, 131 W. Va. 627, 53 S.E.2d 509 (1948), a member of a county board of education owned a grocery store from which the board had purchased groceries for the school lunch program. The Court considered the question of whether the absence of a corrupt motive in the purchases was relevant to the question of whether the purchases were prohibited by W. Va. Code § 61-10-15:

[The] conduct was unlawful because forbidden by statute or was malum prohibitum as distinguished from malum in se. 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 these 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 boards 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 a contract with a board of education in which they were a member . . . .

131 W. Va. at 635, 53 S.E.2d at 514.

We believe that the quoted language is equally applicable to the conduct prohibited by W. Va. Const. art. VI, § 34. An elected representative occupies a position of "high public trust," and is continually subject to public scrutiny which would likely engender suspicion of any pecuniary interest, whether "direct or indirect," in a public contract regardless of whether actual corruption was present.<sup>3</sup>

The question of whether a "direct or indirect interest" in a contract includes that interest, if any, that a person may have in the contracts of their spouse, has been resolved several times in the context of W. Va. Code § 61-10-15. In Haislip v. White, 124 W. Va. 633, 22 S.E.2d 361 (1942), the Court reviewed removal proceedings against two members of a board of education who had voted for the employment of their wives as teachers. The question

---

<sup>3</sup>We have been advised, and have verified, that during the Constitutional Convention of 1872 the legislative printer, who was also elected to serve as the Constitutional Convention printer, was accused of overcharges leading to substantial public sentiment that future printing contracts be awarded based on bids. It also came to light during this convention that a member of the State Senate was employed by the legislative/convention printer. These circumstances alone motivated intense editorializing by "The West Virginia Journal," a weekly newspaper, which strongly suggested corruption on the part of the Senator. The aforesaid public sentiment and editorializing were likely motivations for the inclusion of Article VI, Section 34, in the Constitution proposed by that Convention.

of whether the board members were "directly or indirectly, pecuniarily interested in the proceeds" of their respective wives' teaching contracts was resolved by the Court as follows:

We . . . rest our decision on the broad principle that there is . . . a relation existing between husband and wife, and mutual liabilities growing out of the family relation, which creates, on the part of each, an interest in the contracts of the other, out of which compensation arises, and the proceeds of which are used directly or indirectly within the family circle. . . . We hold that they had a pecuniary interest therein; we think it was a direct interest; it was certainly an indirect interest, and both are inhibited by the statute. . . .

124 W. Va. at 642, 22 S.E.2d at 365-66.

West Virginia Code § 61-10-15 has since been amended so to as specifically allow spouses of board members to be employed as teachers, but the holding that a person has an interest in the contracts of his or her spouse remains good law. After this statutory amendment, a school superintendent nominated his wife, a teacher, for a non-teaching administrative position, and a majority of the county board of education affirmed her nomination and so employed her. The West Virginia Education Association brought a declaratory judgment action seeking a declaration that the employment of a school superintendent's spouse violated W. Va. Code § 61-10-15, by virtue of the pecuniary interest of the superintendent in his spouse's administrative job. The West Virginia Supreme Court of Appeals so held:

Mrs. Jeffries' salary as central administrator was supplemented by \$525 per month in county funds, beyond her teacher's salary. This remuneration from county funds inured to her husband's, the superintendent's, benefit. . . .<sup>4</sup>

W. Va. Education Ass'n v. Preston Co. Board of Education, 171 W. Va. 38, 41, 297 S.E.2d 444, 447 (1982).

---

<sup>4</sup>While we realize that Mrs. Walker played no part in the selection of her husband's company as legislative printer and is not subject to accusations of self-dealing, the language quoted above nevertheless resolves the issue of whether she has a pecuniary interest in the contracts of her husband, which interest alone is sufficient to invoke the prohibition of West Virginia Constitution, Article VI, Section 34.



And, in at least two other decisions, the West Virginia Supreme Court of Appeals has held that members of county governing bodies have a pecuniary interest in the compensation paid to their spouses as county employees. Serge v. Matney, 165 W. Va. 801, 273 S.E.2d 818 (1980); Cimino v. The Board of Education of the County of Marion, 158 W. Va. 267, 210 S.E.2d 485 (1974).

Thus, the phrase "interested, directly or indirectly," incorporates the interest that Delegate (Senator-elect) Walker has in the contract of the company owned by her husband.

The final question is whether the contract must nevertheless be awarded to Jarrett Printing Company because it was the "lowest responsible bidder." This question is resolved by the last-cited case, Cimino v. The Board of Education of the County of Marion, supra. In that case, a former school cook sought a declaratory judgment that the termination of her employment with the Board of Education was unlawful. The Supreme Court of Appeals resolved the case by holding that the cook's employment contract was void as of the time that her husband became elected to the county board of education because the employment contract was then in violation of W. Va. Code § 61-10-15 and was, therefore, contrary to public policy:

Consequently, while Mrs. Cimino's contract with the board of education was legal and binding until the time her husband was elected to the board of education, his election triggered the effect of Code, 61-10-15, and made her contractual rights void from that date.

We realize this action in some aspects seems harsh, particularly in view of Mrs. Cimino's previous satisfactory employment with the school board. We must, however, assume that Mr. and Mrs. Cimino were aware of the provisions of the law at the time he became a candidate for this public office. As worthy as public service in this capacity is, we think it clear that the Legislature and this Court, in interpreting Code, 61-10-15, intended to remove from this important office any possibility of abuse.

158 W. Va. at 273-74, 210 S.E.2d at 490.

Neither W. Va. Code § 61-10-15 nor West Virginia Constitution, Article VI, Section 34, specifically states that contracts in violation of their provisions are void. Rather, the Supreme Court of Appeals in Cimino, supra, followed the well-established common-law doctrine that "an agreement which violates the provisions of

a constitution, . . . or which cannot be performed without violating such provision, is illegal and void." 17 Am. Jur. 2d Contracts § 165, quoted at 158 W. Va. 273, 210 S.E.2d 489. As a consequence of this rule, any legislative printing contract awarded to Jarrett Printing Company while Mrs. Walker is a legislator or legislator-elect would be void by operation of law.

**SUMMARY**

West Virginia Constitution, Article VI, Section 34, prohibits awarding a legislative printing contract to a company owned by the spouse of either a sitting legislator or legislator-elect.

Very truly yours,

MARIO J. PALUMBO  
ATTORNEY GENERAL

By



SILAS B. TAYLOR  
SENIOR DEPUTY ATTORNEY GENERAL

SBT/jy