

ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

An employee of a County Board of Education

OPINION SOUGHT

Whether there is a conflict of interest when a County Board of Education employee's husband is the owner of a vending company that services schools in the same County?

OTHER FACTS RELIED UPON BY THE COMMISSION

An employee of a County Board of Education, was previously suspended for a three-week period regarding the issue of her husband operating vending machines in the school where she works in violation of West Virginia Code 61-10-15. Her husband was previously allowed to serve any school in the County except the one where she worked.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in part that ...no 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 with the governmental body over which he or she has direct authority or with which he or she is employed.

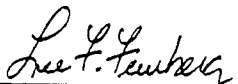
West Virginia Code 6B-2-5(d)(3) states that where the provisions of subdivision (1) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivision (1) of this subsection.

West Virginia Code 6B-1-3(d) defines "immediate family", with respect to an individual, to mean a spouse residing in the individual's household and any dependent child or children and dependent parent or parents.

ADVISORY OPINION

Since this individual is a public employee, no member of her immediate family or business with which she is associated may without exemption be a party to or have an interest in the profits or benefits of a contract with the governmental body with which she is employed pursuant to subsection 5(d)(1) of the Act.

However, the affected governmental body may make written application for exemption if it can show excessive cost, undue hardship or substantial interference with the operation of the affected governmental body would result as set forth in West Virginia Code 6B-2-5(d)(3).



Chairman