

ADVISORY OPINION NO 89-57

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

County School Superintendent and a member of the County Board of Education

OPINION SOUGHT

Whether it is a violation of the Act for the county school board to purchase goods from a grocery store where a Board of Education member is employed?

OTHER FACTS RELIED UPON BY THE COMMISSION

A member of the County Board of Education is an employee (Head Grocer) in a local grocery store. He has no control over the pricing of groceries. The County schools purchased approximately \$2400 last year from the grocery store for goods used in their home economics classes. It would be to the school's advantage to be allowed flexibility in purchasing small items which are too trivial for bidding.

Temporary suspension of purchases has been made, until an advisory opinion is received.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that... no elected public official 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 ...

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that... in the absence of bribery or a purpose to defraud, an elected public official or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner... of the business which is the contractor on the public contract involved. A limited interest for the purposes of this section is an interest not exceeding ten percent... or thirty thousand dollars, whichever is the lesser...

ADVISORY OPINION

It is the Commission's opinion that although the Board member is a public official, subsection (d)(1) of the Act is not applicable since the Board member has a limited interest in the grocery store as defined in subsection (d)(2). It is assumed that the board member owns less than 10% of outstanding shares of the corporation and less than \$30,000.

Therefore, it is not a violation for the county Board of Education to purchase goods from a store where a Board of Education member is employed.



Chairman