

ADVISORY OPINION NO. 89-109

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent of a County School Board of Education

OPINION SOUGHT

Whether an exemption should be given to a County School Board of Education to lease a vehicle from a car dealership which is owned by a Board employee's spouse?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Board of Education leases three driver education vehicles from three local businesses. The County School Board employs three (3) full-time driver education teachers and each teacher uses a leased car from one of the dealers.

One car dealership is owned by a County School Board teacher's spouse. The County Board of Education entered into a lease contract with the dealership prior to the beginning of the 1989 school year.

The County School Board has made a written request for an exemption, citing undue hardship and substantial interference. The cancellation of the lease during the school year would result in a substantial hardship on the County School System and to the students taking driver education classes. It would also interfere with the scheduled class offerings and participation in driver education classes at the County High School.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent 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...with which he or she is employed.

West Virginia Code 6B-2-5(d)(2) states in pertinent part that ...a public employee or a member of his or her immediate family 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, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this section is an interest

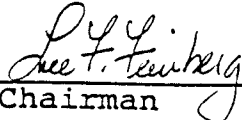
not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.

West Virginia Code 6B-2-5(d)(3) states in pertinent part that... where the provisions of subdivision (1) and (2) 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...governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption.

#### ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsections (d)(1) and (2) follows:

1. The teacher is a public employee.
2. A member of the teacher's immediate family has an interest in the benefits or profits of a contract with the governmental body with which the teacher is employed.
3. For the purpose of this section, "immediate family" is defined as a spouse residing in the individual's household.
4. The Commission assumes that the spouse is the sole owner of the dealership and thus retains more than a limited interest in the company.
5. For the purpose of this section, limited interest is defined as an interest not exceeding ten (10) percent of the outstanding shares of stock issued by a company or thirty thousand dollars, whichever is the lesser.
6. Therefore, it would be a violation, without exemption, for the County School Board to lease a vehicle from a dealership owned by a Board employee's spouse.
7. However, the affected governmental body has made a written request for an exemption from this subsection, citing undue hardship and substantial interference would result in trying to legally withdraw from the lease previously entered into with the dealership.
8. The Commission hereby grants an exemption until August 31, 1990 to the County School Board of Education to lease a vehicle from the dealership since to do otherwise would result in undue hardship and substantial interference with the County School System.

  
Chairman