

ADVISORY OPINION NO. 89-110

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

The President of a Corporation

OPINION SOUGHT

Whether an exemption should be granted to allow a County Board of Education to contract with a company that is owned by a County employee and her spouse?

OTHER FACTS RELIED UPON BY THE COMMISSION

A County school teacher and her spouse own and operate a motorcoach and tour company. The company contracts with the County School System to provide services to the area schools.

The employee, although acting President of the company, is not involved in the day to day operations nor in the solicitation of business. The travel sales are assigned to the staff members and they are not affiliated with the County School System in any capacity.

The affected governmental body has filed a written request for an exemption because the enforcement of subsection (d)(1) would result in excessive cost and substantial inference. With the elimination of the motorcoach and tour company as providers of trips, many of the trips would be cancelled. Other transportation providers may be available, but at a much higher cost to participating students. Furthermore the other transportation providers have a less than desirable reputation.

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...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...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 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...

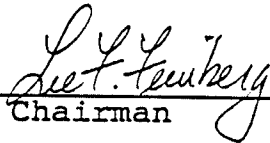
#### ADVISORY OPINION

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, since she is employed by the County School Board of Education.
2. The public employee has an interest in the benefits and profits of a contract with the governmental body with which she is employed.
3. The Commission assumes that the public employee has more than a limited interest in the benefits of that contract.
4. For the purpose of this section, limited interest is defined as ten (10%) percent of the outstanding shares of stock issued by a corporation or thirty thousand dollars, whichever is the lesser.
5. Therefore, it would be a violation of subsection (d)(1) of the Act for the County School Board of Education to contract with a company owned by a County employee.

6. However, the affected governmental body has made a written application to the Ethics Commission for exemption on the basis that excessive cost, undue hardship or other substantial interference would result from the enforcement of subsection (d)(1), since the elimination of the transportation provider company would result in the cancelation of planned trips and also, if any other services are available, it would be at a much higher cost.

7. The Commission finds that excessive cost and substantial interference would result if subsection (d)(1) of the Act were enforced. Therefore, the Commission hereby grants the requested exemption until August 31, 1990.

  
Chairman