

ADVISORY OPINION NO. 89-112

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent for a County Board of Education

OPINION SOUGHT

Whether an exemption should be granted to allow a County School Board to contract with a School Board employee's spouse to provide legal services?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public employee is a teacher at a County High School. Her spouse is a partner in a law firm which has represented the County school system for approximately twenty years. The only exception to this continuous representation involves claims of the liability insurance carrier and those matters are handled by counsel chosen by the insurance company.

The County School Board has submitted a written application to the Commission for exemption, citing excessive cost, undue hardship and substantial interference.

The law firm, because of its experience over the last twenty years, has a complete working knowledge of the specialized body of law dealing with education. This includes grievances, dismissals, suspensions and punishments of personnel and the appellate procedures to be used in the Circuit Court and the Supreme Court of Appeals. A new firm would be required to spend an inordinate amount of time of doing research, becoming familiar with pertinent statutes, etc., all which would result in excessive cost and substantial interference to the County Board of Education.

The law firm would have to cease representation in all current pending matters (approximately 100) and the County Board of Education would have to secure the services of another law firm. The superintendent would have to monitor and participate in the closing and transferring of all files to the new counsel. This would also cause undue hardship and the inordinate amount of time required would result in substantial interference with the operation of the County School Board.

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... 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... no public employee or a member of his or her immediate family... shall 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...excessive cost, undue hardship, or other substantial interference with the operation of a...county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption.

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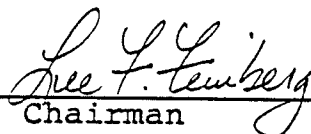
An analysis of the facts presented and the pertinent statutory provisions of subsection (d)(1) and (2) follows:

1. The teacher is a public employee, employed by the County Board of Education.
2. A member of the teacher's immediate family (a spouse) has an interest in the profits or benefits of a governmental contract with the agency with which she 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 has more than a limited interest in the company, since he is a partner in the firm.
5. For the purpose of this section, limited interest is defined as an interest not exceeding ten percent of the partnership or thirty thousand dollars, whichever is the lesser.
6. Therefore, it is a violation, without exemption, for the County School Board to contract for legal services with a law firm whose partner is the spouse of a County School Board employee.

7. However, the affected governmental body has made a written request with the Commission for an exemption, citing undue hardship, excessive cost and substantial interference since a new law firm would be required to spend an inordinate amount of time becoming familiar with pertinent statutes, which would result in excessive cost to the County School Board. Also, the Superintendent would be required to monitor and participate in the closing and transferring of all case files to the new firm, resulting in substantial interference with the operation of the County School Board.

8. The Commission observes the conflict in this particular situation. However, the Commission is also mindful that the Legislature is preparing to address and may make changes in certain provisions of the Ethics Act, including subsection (d)(1).

9. The Commission finds that excessive cost, undue hardship and substantial interference would result from the enforcement of subsection (d)(1) and therefore, the Commission hereby grants the County School Board's request for an exemption until July 1, 1990.


Chairman