

ADVISORY OPINION NO. 89-117

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

Associate Superintendent for a County School Board of Education

OPINION SOUGHT

Whether an exemption should be granted to the County School Board of Education to purchase computer supplies and obtain repairs from a company owned by a School Board employee?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County School Board has purchased computer equipment, supplies and requested repairs from a franchise owned by a County Board of Education employee. Major purchases are made by price quotation, while supplies costing less than fifty dollars and repairs, are made at the retail outlets.

The owner of this particular computer store franchise is employed as a teacher by the County School Board. The teacher does not have authority to purchase any equipment or supplies for the School. These purchases and requests for supplies are made by the administrators.

The County Board of Education has requested an exemption from the provisions of this subsection citing undue hardship, since these stores are the only computer supply stores located in the County.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

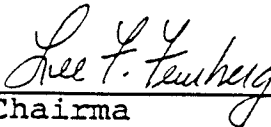
West Virginia Code 6-2-5(d)(1) states in pertinent part that... no public employee...or business with which he...is associated may be a party to a contract with the governmental body...with which he...is employed.

West Virginia Code 6-2-5(d)(3) states in pertinent part that... where the provisions of subdivision (1) of this subsection would result in...excessive cost, undue hardship, or other substantial interference with the operation...the affected governmental body 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 West Virginia Code 6B-2-5(d)(1) and (3) follows:

1. The teacher is a public employee, since he is employed by the County Board of Education.
2. The teacher has an interest in a business contracting with the governmental agency with which he is employed.
3. The Commission assumes that the teacher has more than a limited interest in the business.
4. For the purpose of this section, a limited interest is defined as an interest not exceeding ten percent of the outstanding shares of issued stock of 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 to contract, without exemption, with a company owned by a School Board employee.
6. However, the County Board of Education has submitted a written application to the Ethics Commission for an exemption, on the basis that the franchise owned by the teacher has the only computer supply stores in the County and the inability to purchase supplies from this company would result in undue hardship to the County Board of Education.
7. The Commission hereby grants the County Board of Education's request for an exemption until August 31, 1990 to purchase goods and repair services from the computer store, on the basis that otherwise undue hardship would result.


Chairman