

ADVISORY OPINION NO. 89-131
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON FEBRUARY 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

Superintendent of a County School Board of Education

OPINION SOUGHT

Whether a number of exemptions should be granted to a County School Board of Education pursuant to subsection 5(d)(3) of the Act?

OTHER FACTS RELIED UPON BY THE COMMISSION

The following companies contract with the County School Board of Education. Each business listed below is owned in at least part by a County Board of Education member, a County public employee (or member of his or her immediate family). Following each company listed is the County's basis for a written exemption pursuant to subsection 5(d)(3).

A. Company A - A spouse of a Board Employee

BASIS:

The company bids competitively against other companies outside the County for insulation contracts and provides services (spray-on foam insulation) to the County School system. It is the only company of its type within the area. The last time competitive bids were solicited this company was the only bidder. If this company were not available to bid on contract services it would create excessive costs to the County Board of Education.

B. Company B - Employee of the Board

BASIS:

This company is the only business in the County that carries commercial plumbing and heating supplies such as: transformers, oil furnace parts, nozzles, pump-seals and couplers. Many of these supplies are needed on an emergency basis. If the County Board of Education is unable to purchase supplies from this company, it would result in undue hardship and substantial interference since they would have to wait for a prolonged period of time for another supplier to deliver parts by common carrier.

Company C - Employee of the Board

BASIS:

This is one of two auto parts stores in the County. This company provides motor parts, supplies, etc. that would be purchased by the County Board of Education in emergency situations. If more than one vendor carries the same item, a price check is done and the lowest price is accepted.

It is vital for the County Board of Education to have access to companies such as this one when emergency situations arise. This company is occasionally the low bidder on special order (such as engine blocks) contracts and at times is the only local vendor to have what is needed in stock (i.e., commercial brake linings). The inability to use this business would result in substantial hardship (delay for bus and vehicle parts) and excessive cost to the County Board of Education.

D. Company D - Employee of the Board

BASIS:

This company frequently provides the most competitive bid amount on televisions and video cassette recorders. On a recent bid for a 19" color television this company bid \$225 as compared to bids received from other businesses which ranged in price anywhere from \$295 to \$399 dollars.

The inability to make bid purchases from this company, when they submit the lowest and most responsible bid would result in excessive costs to the County Board of Education.

E. Company E - Employee of the Board

BASIS:

This company provides wrecker services which are used by the County Board of Education. This is the only wrecker service located in the north end of the County. It is vital for the County Board of Education to have access to this company when emergency situations arise. Buses loaded with students in the ditch or in need of towing to the garage in that area should not have to wait for a wrecker fifty miles away. The inability to gain access to such service locally would result in a substantial hardship and excessive cost to the County Board of Education.

F. Company F - Employee of the Board

BASIS:

This company is the sole provider of cable service within the County. The County School Board of Education cannot go outside the County to seek these services because of the tremendous hardship and substantial interference it would impose on the County Board of Education, thus making the use of this service an impossibility, unless they are allowed to use the local supplier. Also, this company has a specific territory (the County) for providing television cable service. The only alternative is the expensive purchase of satellite receivers and subscription fees to all major networks, which would result in excessive costs.

G. Company G - Board of Education Member

BASIS:

This is the only local newspaper service in the County and it must be used for legal advertisement and general adds for the County. The County School Board of Education cannot go outside the County to seek this service because of the tremendous hardship and substantial interference it would impose on the County Board of Education, thus making the provision of this service an impossibility, unless allowed to use the local newspaper.

H. Company H - A Board Member's spouse

BASIS:

This company provides long distance shipping and local hauling for the County Board of Education when they are the lowest bidder on the contract. Therefore, if the County Board of Education were not allowed to utilize this business it would result in excessive costs.

Recently the County needed a boiler unit for a furnace and delivery took several weeks through a common carrier. This business had trucks in the area who returned empty and could have delivered the item more efficiently and expeditiously. They are also the only shop in the County that can custom design hydraulic lines which may be needed on occasion.

I. Business I - Spouse of a Board Employee

BASIS:

The spouse of a Board employee provides contractual services for academic evaluations for the identification of handicapped students. The number of evaluations are determined by teacher referral and tri-annual review.

The employee's spouse provides these services at a much lower cost than other diagnosticians (her rate is \$20 to \$25 dollars per student compared to other evaluators' rates of \$40 to \$45 dollars per student). If the County was not permitted to contract with her for services it would result in excessive cost to the County Board of Education. Also, at the time the job was advertised, the employee's spouse was the only applicant for the job.

J. Business J - Spouse of a Board Employee

BASIS:

The spouse of a Board employee provides contractual services for psychological evaluations for the identification of handicapped students. There are no other licensed psychologists in the County. Going outside the County for this service would result in excessive cost and undue hardship. The employee's spouse's rate is \$115 per evaluation and other psychologists' rates outside the County are \$125 per evaluation.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected or appointed public official or 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 over which he or she has direct authority or with which he or she is employed...

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... an elected or appointed public official or 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...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:

Company A. Since the County Board of Education employee's spouse has more than a limited interest in the profits or benefits of a public contract with a governmental body with which the staff member is employed, it is 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 Board of Education employee's spouse.

However, the affected governmental agency has submitted a written application for exemption.

The Commission hereby grants the request for exemption.

Company B. The owner of the company is a public employee, employed by the County School Board of Education and has more than a limited interest in the profits and benefits of a public contract with the governmental agency with which he or she is employed. Therefore, it is a violation of subsection (d)(1) of the Act for the County School Board of Education to purchase commercial plumbing and heating supplies from a company owned by County Board of Education employee.

However, the affected governmental agency has submitted a written application for exemption.

The Commission hereby grants the request for exemption.

Company C. The owner of the company is a public employee, employed by the County School Board of Education and has more than a limited interest in the benefits and profits of a public contract with the governmental agency with which he is employed. Therefore, it is a violation of subsection (d)(1) of the Act for the County Board of education to purchase supplies, parts etc. from a company owned by a County Board of Education member.

However, the affected governmental agency has submitted a written application for exemption.

The Commission hereby grants the request for exemption.

Company D. Since the County Board of Education employee has more than a limited interest in the profits or benefits of a public contract with the governmental agency with which the staff member is employed, it is a violation of subsection (d)(1) of the Act for the County School Board of Education to purchase televisions and video cassette recorders from a company owned by a County Board of Education employee.

However, the affected governmental agency has submitted a written application for exemption.

The Commission hereby grants the request for exemption.

Company E. The owner of the company is a public employee, employed by the County School Board of Education and has more than a limited interest in the benefits or profits of a public contract with the governmental agency with which he is employed. Therefore, it is a violation of subsection (d)(1) of the Act for the County Board of Education to purchase items from a company owned by a County Board of Education employee.

However, the affected governmental agency has submitted a written application for exemption.

The Commission hereby grants the request for exemption.

Company F. The owner of the company is a public employee, employed by the County School Board of Education and has more than a limited interest in the benefits or profits of a public contract with the governmental agency with which he is employed. Therefore, it is a violation of subsection (d)(1) of the Act for the County Board of Education to contract for cable services from a company owned by a County Board of Education employee.

However, the affected governmental agency has submitted a written application for exemption.

The Commission hereby grants the request for exemption.

Company G. The owner of the company is a public official and has more than a limited interest in the benefits or profits of a public contract with the governmental agency over which he has direct authority. Therefore, it is a violation of subsection (d)(1) of the Act for the County Board of Education to purchase advertising and news media coverage from a company owned by a County Board of Education member.

However, the affected governmental agency has submitted a written application for exemption.

The Commission hereby grants the request for exemption.

Business H. Since the County Board of Education member's spouse has more than a limited interest in the benefits of a public contract with the governmental agency with which the Board member has direct authority, it is a violation of subsection 5(d)(1) of the Act for the County School Board of Education to contract with a company owned by a County Board of Education member's spouse.

However, the affected governmental body has submitted a written application for exemption.

The Commission hereby grants the request for exemption.

Business I. Since a County Board of Education employee's spouse has more than a limited interest in the benefits of a public contract with the governmental agency with which the staff member is employed, it is a violation of subsection (d)(1) of the Act for the County School Board of Education to contract with a County Board of Education employee's spouse.

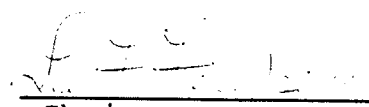
However, the affected governmental agency has submitted a written application for exemption.

The Commission hereby grants the request for exemption.

Business J. Since the County Board of Education employee's spouse has more than a limited interest in the benefits of a public contract with the governmental agency with which the staff member is employed, it is a violation of subsection (d)(1) of the Act for the County School Board of Education to contract with County Board of Education employee's spouse.

However, the affected governmental agency has submitted a written application for exemption.

The Commission hereby grants the request for exemption.


Chairman