

ADVISORY OPINION NO. 90-05

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

President of a County Board of Education

OPINION SOUGHT

Whether an exemption should be granted to allow a County Board of Education employee's spouse to legally represent the County Board of Education as a practicing attorney?

OTHER FACTS RELIED UPON BY THE COMMISSION

The spouse of a County Board of Education employee is a practicing attorney who has represented the County Board of Education since 1977. The County Board of Education employee has been a teaching principal at a County grade school for four years.

The attorney has developed extensive specialization in education law that is not otherwise available within this small rural County. The attorney handles a variety of civil litigation and employee grievances.

The County Board of Education has submitted a written application for exemption citing excessive cost, undue hardship and substantial interference. The attorney has a unique knowledge of the School Board's past practice and policies and it would create undue hardship and excessive cost to train a new attorney.

The attorney is the only available attorney with specialized knowledge in education law within the County, so if the Board would have to look outside the County for new representation, it would cause undue hardship and substantial interference as well as excessive cost involved in travel time and other expenses.

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.

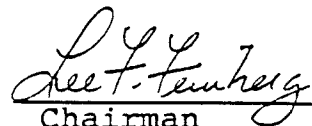
West Virginia Code 6B-2-5(d)(3) states in pertinent part that... where the provisions of subdivision (1) of this subsection would result in...excessive cost, undue hardship, or other substantial

interference with the operation 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 subsection (d)(1) follows:

1. A member of the teacher's immediate family has more than a limited interest in the profits or benefits of a contract with the governmental body with which she is employed.
2. For the purpose of this section "immediate family member" is defined as a spouse residing in the individual's household.
3. For the purpose of this section "limited interest" is defined as an interest not exceeding thirty thousand dollars or ten percent of the outstanding shares of issued stock of a corporation.
4. Therefore, it is a violation of subsection (d)(1) of the Act for the County Board of Education to continue to contract for legal services with the spouse of a County Board of Education employee.
5. However, the affected governmental body has made a written application to the Commission for an exemption citing excessive cost, undue hardship and substantial interference since the attorney is the only practicing attorney in the County with a unique specialization in education law and the County Board of Education would have to travel outside the County to obtain and train new counsel in School Board matters.
6. 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).
7. 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