

ADVISORY OPINION NO. 90-06

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

Superintendent for a County Board of Education

OPINION SOUGHT

1. Whether it is a violation of the Act for a County Board of Education to purchase trophies from a company owned by a County Board of Education employee?
2. Whether it is a violation of the Act for School Booster Organizations to purchase trophies with their funds from a company owned by a County Board of Education employee?
3. Whether it is a violation of the Act for a School Bookstore to award a contract to a company that is owned by a County Board of Education employee, if the bid submitted is the lowest and most responsible bid?
4. Whether it is a violation for an independent organization to purchase trophies from a company owned by a County Board of Education employee, if the team the employee coaches may be in a position to receive the trophies?

OTHER FACTS RELIED UPON BY THE COMMISSION

A member of a County Board of Education owns an award and trophy company. The company wishes to sell trophies to the County Board of Education, school booster organizations, school bookstores and other independent organizations.

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 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...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 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...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.

West Virginia Code 18-5-13 states in pertinent part that..."quasi-public funds" as used herein means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

ADVISORY OPINION

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

a. The owner of the company is a public employee since he is employed by the County Board of Education.

b. The Commission assumes that the public employee has more than a limited interest in the company contracting with the governmental agency with which he is employed.

c. For the purpose of this section "limited interest" is defined as an interest not exceeding 10% of the outstanding shares of stock of a corporation or thirty thousand dollars, whichever is the lesser.

d. Therefore, it would be a violation, without exemption, for the County Board of Education to purchase trophies from a company owned by a County School Board of Education employee.

e. However, the affected governmental body may submit a written application to the Ethics Commission for an exemption on the basis that excessive cost, undue hardship or substantial interference with the operation of the County School Board would result.

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

a. The owner of the company is a public employee since he is employed by the County Board of Education.

b. The Commission assumes that the public employee has more than a limited interest in the company contracting with the School Booster Organization.

c. For the purpose of this section "limited interest" is defined as an interest not exceeding more than 10% of the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.

d. However, the contract with the School Booster Organization is considered a public contract as meant by the Act. The money raised and used by the School Booster Organization is considered quasi-public funds by the State Department of Education and by statute. The County has certain oversight and auditing responsibilities for the schools' Booster Organizations. Although, the money is not provided by the County, the schools are regulated and all school activities must be approved by the County Board of Education.

e. In regard to quasi-public funds West Virginia Code 18-5-13 states in part that, subject to State law and educational policy, a County Board of Education has the authority to...control and manage...any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys.

f. Therefore, it is a violation of subsection (d)(1) of the Act for the public employee to contract to sell trophies to the School Booster Organization.

g. However, the affected governmental body may submit a written application for exemption to the Ethics Commission if it can show that excessive costs, undue hardship or other substantial interference would result.

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

a. The owner of the company is a public employee since he is employed by the County Board of Education.

b. The Commission assumes that the public employee has more than a limited interest in the company contracting with the governmental agency with which he is employed. A School Bookstore is considered part of the County Board of Education system.

c. For the purpose of this section "limited interest" is defined as an interest not exceeding 10% of the outstanding shares of stock of a corporation or thirty thousand dollars, whichever is the lesser.

d. Therefore, it would be a violation, without exemption for the School Bookstore to purchase trophies from a company owned by a County School Board of Education of Education employee.

e. However, the affected governmental body may submit a written application to the Ethics Commission for an exemption on the basis that excessive cost would otherwise result since this company submitted the lowest and most responsible bid.

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

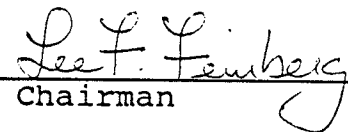
a. The owner of the company is a public employee since he is employed by the County Board of Education.

b. The Commission assumes that the public employee has more than a limited interest in the company contracting with independent organizations.

c. For the purpose of this section "limited interest" is defined as an interest not exceeding more than 10% of the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.

d. However, the contract to sell trophies to an independent organization is not a public contract.

e. Therefore, it is not a violation of subsection (d)(1) of the Act for the public employee to sell trophies to independent organizations although there is a possibility that a sports team coached by the public employee may receive a trophy purchased as a result of the contract.


Chairman