

ADVISORY OPINION NO. 90-84

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 3, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Director of Purchasing for a County Board of Education

OPINION SOUGHT

Whether an exemption should be granted to allow a County Board of Education and individual schools to purchase trophies and awards from a company owned in part by the County Board of Education Assistant Superintendent?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Assistant Superintendent owns 66 2/3% in a trophy and awards company. The annual gross sales of the company is \$18,000, with approximately \$4,000 of that sum derived from sales to County schools.

The affected governmental body has applied for an exemption citing excessive costs, undue hardship and substantial interference. This company is the only local supplier of trophies and awards. If the County Board of Education is not permitted to purchase items from this company the only alternative would be to purchase the trophies from outside the County. This would cause undue hardship and substantial interference since the trophies would have to be purchased without prior examination because of the distance required to be traveled. Also, if the County Board of Education is forced to purchase outside the County, excessive costs would occur because of higher prices and additional freight charges.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official 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 Section 6B-2-5(d)(2) states in pertinent part that...an elected or appointed public official...or a business with which he...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 Section 6B-2-5(d)(3) states in pertinent part that...where the provisions 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

The Assistant Superintendent is employed by the County Board of Education.

The Assistant Superintendent has more than a limited interest in a business which contracts with the County Board of Education, since he owns 66 2/3% of the Company.

For the purpose of this section "limited interest" is defined as 10% of the outstanding shares of a corporation or \$30,000, whichever is the lesser.

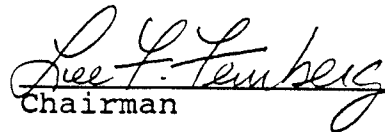
Therefore, the Commission finds that it would be a violation of subsection 6B-2-5(d)(1) of the Act for the County Board of Education to contract with a business in which a County employee has more than a limited interest.

However, the affected governmental body has submitted a written application to the Ethics Commission for an exemption citing excessive costs, undue hardship and substantial interference. This company is the only local supplier of trophies and awards. If the County Board of Education is not permitted to purchase items from this company the only alternative would be to purchase the trophies from outside the County and without prior examination. This would cause undue hardship and substantial interference with the County Board of Education.

Also, if the County Board of Education is forced to purchase outside the County, excessive costs would occur because of higher prices and additional freight or transportation charges.

Therefore, the Commission finds that excessive costs, undue hardship and substantial interference would result from the enforcement of the provisions in subsection 6B-2-5(d)(1) and hereby grants the requested exemption.

Although the Commission finds that no evidence to support this has been presented at this time, the Assistant Superintendent should be mindful of subsection 6B-2-5(b)(1) of the Act which prohibits a public official from using his prestige or the prestige of his office for his own personal gain.


Chairman