

ADVISORY OPINION NO. 90-92

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County School Superintendent

OPINION SOUGHT

Whether it is a violation of the Act for the County Board of Education to purchase an office building from the law firm that previously served as their Bond Counsel?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor would like to purchase an office building which is located next to the present main administration offices of the County School System and the High School. The Board of Education has owned a major part of the parking lot that is contiguous to the property for many years.

The County Board of Education has recently approved a long-range plan to improve the educational facilities at the high school. Presently, the administrative offices of the school system are located in three old converted residences on each corner of the high school property. It has been a long term goal of the Board of Education to consolidate the office operation into one central location. Further, expansion of high school facilities and creation of needed faculty and student parking can only be realized by removing the three present administrative structures and relocating the offices.

The law firm who presently owns the office building previously served as the Bond Counsel through the passage of a multimillion dollar bond issue in November 1989 and the sale of the bonds in March 1990. The firm was selected to act as the Bond Counsel through a process of submission of proposals and bids.

The County Superintendent made an inquiry of a local real estate office as to the possibility of purchasing the property in August 1989. The availability of the property was advertised in the local newspaper, by a local real estate office. The School System was not informed at the onset about the actual owner of the building. The law firm originally intended to locate their offices there, but later decided on another location. Therefore, the property was available for sale.

The County Board of Education has been informed that the law firm will provide a written representation that no partner of the firm has a spouse or un-emancipated sibling employed by the School System.

Also, the formal Bond Counsel relationship with the Board of Education was concluded with the sale of the bonds in March of 1990.

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 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 which such official or employee may have direct authority to enter into, or over which he or she may have control...

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

(A) An interest:

(i) not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) not exceeding thirty thousand dollars interest in the profits or benefits of the contract;

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The Commission finds that the County Board of Education would be contracting with a Law Firm for the purchase of the property. There is no indication that any County public employee or official has an ownership interest of greater than 10% in the law firm or would receive profits or benefits of \$30,000 or more as a result of the public contract of sale.

Also, the Commission would note that the previous employment relationship between the County Board of Education and the Law Firm was concluded in March 1990 and would not exist at the time of the sale.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Act for the County Board of Education to purchase real estate from a law firm that previously served as their Bond Counsel.

Fred H. Caplan
Vice-Chairman