

ADVISORY OPINION NO. 90-155

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Member of a County Board of Education

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County Board of Education member, to sell insurance and investments to County Board of Education employees?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Board of Education member serves as an agent for independent insurance companies. The member earns his living selling insurance and investments. He is paid on a commission basis for his participation in this program. His clients are a cross section of society and include County Board of Education employees such as principals, teachers and service personnel.

The requestor states that he does not have an ownership interest in any of the independent insurance companies and would not have an interest or benefits of more than \$30,000 in any insurance or investment contract.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain or that of another person.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected...public official...or business with which he... she is associated may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he...may have control:...Provided, however, that nothing herein shall be construed to prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he...may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an elected...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 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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Private Contract

The Commission finds that the County Board of Education member has direct authority and control over the letting of the School Board's **public** contracts.

However, here the Board member is associated with a business that has an interest in the profits or benefits of **private** contracts between the Insurance agency and certain County Board of Education employees and are not contracts let by the School Board.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for a County Board of Education member to contract with individuals while serving an insurance agency which utilizes the member as an agent in the **private** contract.

Improper Use of Office for Private Gain

The Commission would note that the County Board of Education member should be mindful of subsection 6B-2-5(b)(1) which prohibits a public official from intentionally using his office or prestige of his office for his own private gain (i.e. using his office to secure the private contract for the insurance agency which he represents or using confidential information gained through his public employment).

This would include a prohibition that the School Board member must not promise a raise, promotion or other benefit to County School Board employees if he or she buys insurance or invests with him. Conversely, the opposite would also be a violation in that the School Board member must not demote, reprimand or intentionally cause some other harm to a County School employee who refuses to purchase insurance or invest with his insurance company.



Chairman