

ADVISORY OPINION NO. 90-162

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Council member of a Multi-County Vocational Center

OPINION SOUGHT

Whether an exemption should be granted pursuant to subsection 6B-2-5(d)(3) to allow a Director of a Multi-County Vocational School to purchase a modular home constructed by students of the facility and funded by the Vocational School?

OTHER FACTS RELIED UPON BY THE COMMISSION

For the past twelve years the Multi-County Vocational School has constructed a modular home which is then sold at public auction. This project generates badly needed funds for the Center and serves as a hands-on learning project for the students.

The home which was constructed by students during the 1989-1990 school year was put up for auction on June 23, 1990. The highest bid was 27,500, which was rejected by the Director. The Director stated that this price did not adequately cover the costs of construction and allow for adequate profit. The cost of construction was \$25,170 and advertising costs were \$2,613 (a total of \$27,783).

The home was then put up for sealed bids with a deadline of July 20, 1990 for submitting such bids. Only one bid was received, in the amount of 5,100. This bid was also rejected since it did not cover the costs of construction. The Director has not received any further inquiries and only a few individuals have shown a casual passing interest.

The Director of the Center, and a teacher would like to purchase the home constructed by the carpentry class for \$32,000.

The affected governmental body has submitted a written application to the Commission for an exemption allowing the Director of the Vocational School to purchase the modular home funded by the Vocational School. The request cites excessive costs and undue hardship. If the modular home is not sold, the Vocational Center and the Multi-County Council will suffer undue financial hardship which will also cause substantial interference with the School's instructional program. Also, it will result in an excessive loss of revenue for the operational budget of the Center.

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 or public employee 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 appointed public official or public employee...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 appointed public official or public employee...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**;

West Virginia Code Section 6B-2-5(d)(3) states in pertinent part that...where the provisions of subdivisions (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 a written application to the Ethics Commission for an exemption.

ADVISORY OPINION

The Commission has determined that it would be a violation of the Ethics Act for the Director of a Multi-County Vocational school to contract with the Multi-County Vocational Center Council to purchase a modular home constructed by students of the facility and funded by the Vocational School.

Pursuant to subsection 6B-2-5-(d)(1) of the Ethics Act a public official may not have more than a limited interest in the profits or benefits of a public contract over which the official has direct authority and control. The Director has direct authority and control over the letting of public contracts by the County Vocational school.

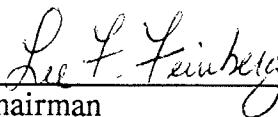
The requestor has more than a limited interest in the profits or benefits of a public contract. For the purpose of this section "limited interest" is defined as an interest not exceeding ten percent of the partnership or not exceeding thirty thousand dollars interest in the profits or benefits of the contract. As a party to the public purchasing agreement (contract) the Director of the Vocational school would fall within that category.

Therefore, it would be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for the Director of a Vocational school to purchase a modular home constructed by students of the facility and funded by the Vocational School.

However, the affected governmental body has submitted a written application to the Ethics Commission for an exemption citing excessive costs and undue hardship. If the modular home is not sold, the County and Vocational Center will suffer undue financial hardship which will also cause substantial interference with the School's instructional program. Also, it will result in an excessive loss of revenue for the operational budget of the Multi-County Vocational Center.

The Commission hereby grants an exemption pursuant to subsection 6B-2-5(d)(3) to allow the requestor to participate in a new bidding process if these three criteria are met:

1. The auction must be publicly advertised, with sufficient public notice being given,
2. The Director of the Vocational School must remove himself from the bidding process,
3. All confidential information, such as the cost of construction and all previously submitted bids must be disclosed, with a minimum bid price being set.


Chairman