

**ADVISORY OPINION NO. 96-05**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON MARCH 7, 1996**

**GOVERNMENTAL BODY SEEKING OPINION**

Treasurer of a County School Board

**OPINION SOUGHT**

Is it a violation of the Ethics Act or WV Code 61-10-15 for individual public schools to purchase school supplies from a company which employs the spouse of the Treasurer/Business Manager for the County Board of Education?

**FACTS RELIED UPON BY THE COMMISSION**

The requester is the Treasurer/Business Manager for a County Board of Education. In that capacity he is responsible for all business affairs of the school system, including the supervision of the purchasing director. He exercises no control or influence over purchasing decisions, but does control, in concert with the Board of Education, the procedures and practices which the purchasing department must follow.

The requester's spouse is employed as a salesperson for a company that sells school supplies. She is an employee of that company and has no ownership interest. Individual schools would like to purchase materials from this company.

Each school has its own checking account which contains funds raised through school activities, PTA's, state faculty senate funds and contributions from the County Board of Education. The County Board of Education contribution consists of \$150 per teacher employed at that school and these funds may be used at the school's discretion. Neither the School Board Treasurer nor the County Board of Education participate in or have knowledge of the purchasing decisions of the individual schools as they relate to these funds and they are not required to approve the payment of such invoices.

Each school is considered to be a separate and distinct financial accounting entity. The individual school principal is responsible for the financial management of his particular school, but is required to ensure that the school complies with the State and local Board of Education purchasing policies and procedures.

### **PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

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

West Virginia Code 6B-2-5(d)(1) provides in pertinent part that... In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, 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 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...or any member of a county or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control...

### **ADVISORY OPINION**

#### **The Ethics Act**

Pursuant to WV Code 6B-2-5(b)(1) a public servant may not use his public office or the resulting prestige for his own private gain or for the private gain of another. Consequently, the requester may not use his status or influence as the Treasurer/Business Manager for a County Board of Education to increase, obtain or promote the interests of his spouse or her private employer.

As previously noted, the requester's spouse is employed as a salesperson for a company that sells school supplies. She is an employee of that company and has no ownership interest. Individual schools would like to purchase materials from this company.

West Virginia Code 6B-2-5(d)(1) provides that a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. For the purpose of this section, a "limited interest" is defined as an interest not exceeding ten percent of a company or thirty thousand dollars interest in the profits or benefits of the contract.

As the Treasurer/Business Manager of a County Board of Education, the requester is responsible for all business affairs of the school system. However, each school has its own checking account which contains funds raised through school activities and these funds may be used at the school's discretion. Neither the School Board Treasurer nor the County Board of Education participate in or have knowledge of the purchasing decisions of the individuals schools as they relate to these funds and they are not required to approve the payment of such invoices.

Further, the Commission previously determined that mere **employees** of a company involved in a public contract have only a limited interest in such contracts.

Therefore, it would not be a violation of WV Code 6B-2-5(d)(1) for individual schools to purchase school supplies from a company which employs the spouse of a Treasurer/Business Manager for the County Board of Education since the requester does not have direct authority or control over the contract and would have only a limited interest in such contract.

#### **WV Code 61-10-15**

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract.

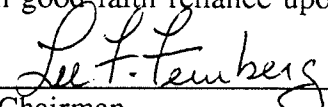
The requester is the Treasurer/Business Manager for a County Board of Education and in that capacity he is responsible for all business affairs of the school **system**, including the supervision of the purchasing director.

However, the State Board of Education, when establishing purchasing policies and procedures, provided that each school is considered to be a separate and distinct financial accounting entity and that the individual school principal is responsible for the financial management of his particular school. They further established that each school has its own checking account which contains funds raised through school activities and various contributions and that these funds may be used at the school's discretion.

The requester has stated that neither the School Board Treasurer nor the County Board of Education participate in or have knowledge of the purchasing decisions of the individuals schools as they relate to the funds contained in the account outlined above and that they are not required to approve the payment of such invoices. Consequently, the requester's position as a Treasurer/Business Manager for the County Board of Education does not give him the degree of influence over the letting of those contracts as contemplated by WV Code 61-10-15.

Therefore, it would not be a violation of WV Code 61-10-15 for the for individual schools to purchase school supplies from a company which employs the requester's spouse since the requester does not have voice, influence or control over the letting of contracts between the private company and the individual schools.

The Commission notes that any person acting in good faith reliance upon an advisory opinion shall be immune from the sanctions of WV Code 61-10-15 and shall have an absolute defense to any criminal prosecution for any actions taken in good faith reliance upon the opinion.

  
Chairman