

ADVISORY OPINION 89-68

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

Superintendent, County School Board

OPINION SOUGHT

Whether a County Board of Education should be granted an exemption to contract with a towing service when it is owned by the spouse of a county employee?

FACTS RELIED UPON BY THE COMMISSION

The only tire and wrecker service available in the County is owned and operated by the husband of a school bus operator who is employed by the county Board of Education. The nearest other services are approximately 45 minutes to an hour away from the County School Board location.

The Superintendent states that since there is no other towing service available, an enforcement of the Act would result in excessive costs for wrecker service and would leave buses loaded with children stranded for long periods of time while attempting to obtain wrecker service from another area. For the County not to be permitted to use this service would result in excessive cost, (based on a per mile rate service) undue hardship and substantial interference with the operation of the School Board.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no public employee or member of his or her immediate family... 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 is employed...

West Virginia Code 6B-1-3(d) states in pertinent part that "immediate family", with respect to an individual, means a spouse residing in the individual's household...

West Virginia Code 6B-2-5(d)(3) states where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or

other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

It is the Commission's finding that based upon the facts presented the County has demonstrated that excessive cost, undue hardship and substantial interference to the School Board would result if the provisions of subsection (d)(1) were applied.

Therefore, based on the facts set forth the Commission hereby grants the County School Board an exemption pursuant to subsection (d)(3) to contract with a wrecker service owner whose spouse is a bus operator for the County Board of Education.

  
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Chairman