

ADVISORY OPINION NO. 89-92

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

Superintendent of a County School Board

OPINION SOUGHT

Whether a County school principal retained by the Board of Education to act as a computer consultant to other principals in the County is in violation of 6B-2-5(d) of the Act?

OTHER FACTS RELIED UPON BY THE COMMISSION

The school principal involved has considerable background and expertise with computers. The Board has approved employing this individual to act as a consultant to other principals in the County when they are having difficulty with their computer systems. For such services, he is paid the same hourly fee he receives as a principal.

If the Commission decides there is a violation of the Act, the Superintendent is simultaneously requesting an exemption pursuant to subsection (d)(3) on the grounds that the computer expertise possessed by this employee is not otherwise readily available in the County and when available could not be obtained at a lesser cost than what the Board pays the principal.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no... public employee 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 has direct authority or with which he or she is employed...

West Virginia Code 6B-2-5(d)(3) states where the provisions of subdivision (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

An analysis of the facts presented and pertinent statutory provisions of West Virginia Code .6B-2-5(d)(1) follows:

1. The Principal is a public employee, since he is employed by the County Board of Education.
2. The Principal has a public contract with the governmental agency with which he is employed.
3. Therefore, it would be a violation, without exemption, of subsection (d)(1) of the Ethics Act for the County School Board to retain the Principal to act as a consultant.
4. However, the affected governmental body has made a written application for an exemption based on undue hardship and substantial interference. The County Board of Education has stated that this individual is the only person available who possesses the requisite computer expertise to train and assist other County employees.
5. The Commission has determined that the governmental body has demonstrated that undue hardship and substantial interference would result. Therefore, the exemption is granted.

Lee F. Lumberg  
Chairman