

ADVISORY OPINION NO. 89-93

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

An elementary school teacher

OPINION SOUGHT

Whether it is a violation of the Act for the County School Board of Education to purchase trophies from a business which is owned by a County school teacher?

OTHER FACTS RELIED UPON BY THE COMMISSION

A County school teacher is the owner/operator of a sports and trophies business. The business is the only trophy business in the County. Some schools and individual teachers order awards from the business because it is local and offers low prices (the business charges a lower rate, that is 10% is added to the wholesale cost for the schools).

The County schools and teachers are not going to drive to another city to buy their awards. They do not want to spend their own money to travel to other areas to purchase and then return to pick up their awards.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code 6B-2-5(d)(3) states in pertinent part that... 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 provision of West Virginia Code 6B-2-5(d)(1) follows:

1. The teacher is a public employee, since he was hired by the County Board of Education.
2. The teacher has more than a limited interest in the business which is contracting with the governmental agency with which he is employed.
3. Limited interest is defined as an interest not exceeding ten percent of all outstanding shares of a corporation or thirty thousand dollars whichever is the lesser. The Commission assumes that the teacher is the sole owner of the business and would have more than a limited interest.
4. Therefore, it would be a violation, without exemption, of subsection (d)(1) of the Ethics Act for the County School Board to contract (purchase merchandise) with a school employee's company.
5. However, if the provisions of this subsection would result in undue hardship, excessive cost or substantial interference with the County School Board it may submit a written application for an exemption.

Lee F. Fenberg
Chairman