

ADVISORY OPINION NO. 89-104

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

Treasurer for a County Board of Education

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County School to independently purchase supplies with quasi-public funds from a business which is owned by a County Board of Education employee, but who is not directly employed with that school?

OTHER FACTS RELIED UPON BY THE COMMISSION

A school would like to use money from its General Fund to purchase materials from a business which is owned by a County Board employee. The employee does not work at this particular school.

The money in the General Fund is obtained from ticket sales to athletic events, concessions, fundraisers, vending machines and school carnivals. The County does not contribute to the school's General Fund. However, the County has certain responsibilities of auditing and overseeing the proper use of the money in the General Fund. The State has generally characterized schools' General Funds as quasi-public funds.

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 18-5-13 states in pertinent part that..."quasi-public funds" as used herein means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

### ADVISORY OPINION

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

1. The Board employee is a public employee since he is employed by the County School Board of Education.
2. The Commission assumes that the Board employee as owner of the company holds more than a limited interest.
3. For the purpose of this section, limited interest is defined as ten percent of the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.
4. A business with which a public employee is associated may not be a party to a public contract with the governmental agency with which he is employed. As previously noted the County School Board of Education employs the individual.
5. When the school uses money from its General Fund to purchase items, it is considered a public contract since the Fund has previously been characterized as quasi-public.
6. In regard to quasi-public funds West Virginia Code 18-5-13 states in part that, subject to State law and educational policy, a County Board of Education has the authority to..control and manage...any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys.
7. The County, as determined by the State Department of Education, has certain oversight and auditing responsibilities for the schools' General Funds. Although, the money is not provided by the County, the schools are regulated and all school activities must be approved by the County Board of Education.
8. Therefore, it would be a violation of subsection (d)(1) of the Act for a specific County School to use quasi-public funds to contract with a business owned by a County School Board employee.
9. However, the affected governmental body may submit a written application to the Ethics Commission for exemption if it can show that excessive cost, undue hardship or other substantial interference would otherwise result.

  
Chairman