

ADVISORY OPINION NO. 89-129

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A superintendent for a County Board of Education

OPINION SOUGHT

Whether an exemption should be granted to the spouse of a County Board of Education employee who is an attorney that has represented the County School Board for fifteen years?

OTHER FACTS RELIED UPON BY THE COMMISSION

The attorney has represented the County School Board for fifteen years and during that period has also personally represented four separate school Superintendents.

Through his representation of the County Board of Education the attorney has developed an expertise with regard to matters associated with the school system in general and the County Board of Education, in particular.

Although there are approximately fifty attorneys practicing in the County, thirty-three of these attorneys would be disqualified from representing the County Board of Education under the Ethics Act. Furthermore, many of the remaining attorneys have represented parties in actions against the County Board of Education.

The County Board of Education has applied for an exemption citing excessive cost, undue hardship and substantial interference. If the exemption is not granted the Board would have to venture outside the County and obtain legal counsel from another area, which would increase the cost of legal representation to the Board. There is currently more than forty separate pending cases or matters concerning the County Board of Education and to retain new counsel unfamiliar with these matters would result in excessive cost, undue hardship and substantial interference with the operation of the County School System.

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 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...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) of this subsection would result in...excessive cost, undue hardship, or other substantial interference with the operation of...county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption.

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsection (d)(1) follows:

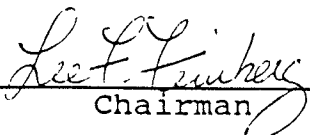
Since the attorney is the spouse of a County Board of Education employee, it is a violation of subsection (d)(1) of the Act for the County Board of Education to contract with him to be their legal counsel.

However, the affected governmental body has made a written application to the Commission for an exemption citing undue hardship, substantial interference and excessive cost.

Through his representation of the County Board of Education the attorney has developed an expertise with regard to matters associated with the school system in general and the County Board of Education in particular. If the exemption is not granted the Board would have to go outside the County and obtain legal counsel from another area, which would increase the cost of legal representation to the Board. There is currently in excess of forty separate pending cases concerning the County Board of Education.

The Commission observes the conflict in this particular situation. However, the Commission is also mindful that the Legislature is preparing to address and may make changes in certain provisions of the Ethics Act, including subsection (d)(1).

The Commission finds that excessive cost, undue hardship and substantial interference would result from the enforcement of subsection (d)(1) and therefore, the Commission hereby grants the County School Board's request for an exemption until August 31, 1990.


Chairman