

ADVISORY OPINION NO. 90-19

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent for a County School Board of Education

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County School Board of Education to continue to contract with a company in which a Board of Education employee has more than a limited interest, when the contract was awarded prior to September 30, 1989?

OTHER FACTS RELIED UPON BY THE COMMISSION

An oil company is the current supplier of gasoline and diesel fuel products to the County School Board of Education. A teacher in the County School system has more than a limited interest in this oil company.

The County School Board of Education advertised the purchase of gasoline and diesel fuel for public bid on August 22, 1989 and the bids were accepted until September 7, 1989. The bid was awarded to the public employee's company (as the lowest and most responsible bidder) on September 12, 1989.

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...

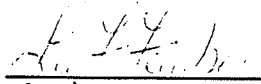
West Virginia Code 6B-2-5(d)(2) states in pertinent part that...a public employee...or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.

West Virginia Code 6B-2-4(w) states in pertinent part that...the provisions of this section shall apply to violations of this Act occurring after the thirtieth day of September, one thousand nine hundred eighty-nine...

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsections (d)(1) and (2) follows:

1. The teacher is a public employee, since she is employed by the County School Board of Education.
2. The teacher has more than a limited interest in the profits or benefits of a contract with a governmental agency with which she is employed.
3. For the purpose of this section "limited interest" is defined as an interest not exceeding ten percent of the outstanding shares of stock issued by a corporation or thirty thousand dollars, whichever is the lesser.
4. However, the public contract was awarded to the public employee's company prior to the time period established by the Ethics Act, which is September 30, 1989.
5. Therefore, it would not be a violation for the County School Board of Education to continue to contract with the company in which the public employee has more than a limited interest, when the contract was awarded by the County Board of Education to the teacher's business prior to September 30, 1989.

  
Chairman