

ADVISORY OPINION NO. 92-27

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 6, 1992

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent of a County Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act for a County Board of Education to place legal advertisements in a newspaper in which a Board Member owns more than a limited interest and, if so, may the Board of Education be granted an exemption from that prohibition?

FACTS RELIED UPON BY THE COMMISSION

The County Board of Education must publish legal notices in a newspaper. Such notices include requests for construction bids for the new high school, the Board's budget and other contract bid notices. There are several newspapers in the County which meet the statutory requirements for publishing bona fide legal notices.

In order to reach the greatest number of citizens in the County, the Board of Education would like to publish its legal advertisements in the newspaper with the largest number of subscribers. However, a new member of the County Board of Education is the editor and a major stockholder in this publication. This newspaper has the largest circulation in the County with 3098 subscribers. The newspaper with the second highest circulation figures has only 800 subscriptions.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected...public official...or business with which he...is associated may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he...may have control...

West Virginia Code §6B-2-5(d)(2) states in pertinent part that...an elected...public official...or a business with which he...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 subsection is:

- (A) An interest:
- (i) not exceeding ten percent of the partnership or the outstanding shares of a corporation;
or
 - (ii) not exceeding thirty thousand dollars interest in the profits or benefits **of the contract**;

West Virginia Code §6B-2-5(d)(3) states in pertinent part that...where the provisions of subdivisions (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 a written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

Pursuant to WV Code §6B-2-5(d)(1) public officials may not have more than a limited interest in the profits or benefits of a public contract over which they have direct authority or control.

As a member of the County Board of Education, the newspaper editor has authority or control over the Board's public contracts, including the selection and placement of legal advertisements in area newspapers. Further, as a stockholder of the newspaper with more than a ten percent ownership interest, that County Board of Education member has more than a limited interest in the profits or benefits of such contract. Therefore it would be a violation of WV Code 6B-2-5(d)(1) for the County Board of Education to place legal advertisements in a newspaper in which a Board member is a major stockholder.

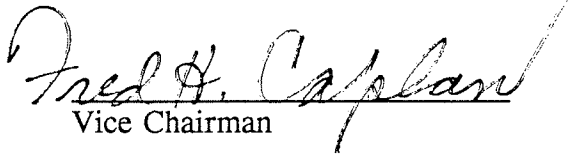
Pursuant to WV Code §6B-2-5(d)(3), however, the County Board of Education has submitted a written application to the Commission for an exemption from the prohibition established in WV Code §6B-2-5(d)(1) citing undue hardship and substantial interference with the operation of the County Board of Education.

The Commission notes that WV Code §5-22-1 specifically requires that the State and its subdivisions, including County Boards of Education, solicit competitive bids for every construction project exceeding twenty-five thousand dollars thus mandating the publication of requests for construction bids.

The County Board of Education has provided the Commission with circulation figures for the newspapers available within the County. Such figures demonstrate that the ability to publish legal notices in this newspaper is the most efficient and effective method of reaching the greatest number of citizens in the County. To deny the Board of Education access to this means of advertisement would cause a substantial interference with the operation of the County Board of Education.

It is the Commission's opinion that the County Board of Education has fulfilled the requirements to satisfactorily show that undue hardship and substantial interference with the operation of the County Board of Education would result if an exemption from subsection (d)(1) is not granted.

Therefore, the Ethics Commission hereby grants the requested exemption.


Vice Chairman