

ADVISORY OPINION NO. 90-03

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Prosecuting Attorney for a County Board of Education

OPINION SOUGHT

1. Whether an exemption should be granted to allow a County Board of Education to purchase fuel from a Gas Company subsidiary when two members of the County Board of Education have more than a limited interest in the parent Gas Company?
2. Whether it is a violation of the Ethics Act for a County Board of Education to purchase bonds and flood insurance from a company which employs a County Board of Education member's spouse?

OTHER FACTS RELIED UPON BY THE COMMISSION

Gas Company

At least two members of the County Board of Education own stock in a Gas Company. One of the County Board of Education members is employed by the Gas Company and owns 2,805 share of stock with present day fair market value of \$120,615.00. The other County Board of Education member's spouse is employed by the Gas Company and owns 4,517 shares of stock with a present day fair market value of \$217,700.00.

The County Board of Education purchases gas from a subsidiary corporation of the Gas Company.

A request for exemption is made since the Gas Company's subsidiary corporation, is the only supplier of gas in the area and certainly the most convenient and logical choice for the County Board of Education.

Oil and Gas Company

Another Board members's spouse and mother-in-law own an independent oil and gas company which sells fuel to the parent Gas Company but does not have a public contract with the County School Board.

Insurance Agency

The County Board of Education purchases bonds and flood insurance from an insurance agency which employs a public employee's spouse.

The public employee spouse's job title and description are strictly secretarial in nature. This insurance agency is the only agency in the County which sells bonds and flood insurance. The spouse does not have any ownership interest in the business.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected or appointed public official or public employee or member of his or her immediate family 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 over which he or she has direct authority or with which he or she is employed.

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... an elected or appointed public official or public employee or a member of his or her immediate family 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-2-5(d)(3) states in pertinent part that... where the provisions of subdivision (1) and (2) of this subsection would result in...excessive cost, undue hardship, or other substantial interference with the operation of a...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

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

a. The members of the County Board of Education are public officials.

b. The public officials have more than a limited interest in the parent Gas Company and the profits or benefits of a public contract with the governmental body over which they have direct authority (the County Board of Education).

c. For the purpose of this section "limited interest" is defined as an interest not exceeding 10% of outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.

d. Therefore, it is a violation of subsection (d)(1) of the Act for the County Board of Education to purchase gas from the Gas Company or its subsidiary corporation when County Board of Education members own more than 10% of the outstanding shares of stock in the parent company.

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

f. The Commission finds that undue hardship, substantial interference and excessive costs would result from the enforcement of the provisions of these subsections and hereby grants the requested exemption.

Additionally in response to the question concerning the Board of Education member's spouse and mother-in-law who own an independent oil and gas company which sells to the Gas Company, there does not appear to be a public contract with the County Board of Education in this instance. Therefore, it is not a violation of subsection (d)(1) of the Act for the independent oil and gas company to contract with the parent Gas Company.

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

a. The individual named is a public employee.


b. A member of his immediate family is employed with a agency which has a public contract with the governmental agency with which he is employed.

c. For the purpose of this section "immediate family member" is defined as a spouse residing in the individual's household.

d. However, the public employee's immediate family member does not have an interest in the public contract since she is an employee and has no ownership interest in the insurance company.

e. For the purpose of this section "limited interest" is defined as ten percent of the outstanding shares of stock issued by a corporation or thirty thousand dollars whichever is the lesser.

f. Therefore, it is not a violation of subsection (d)(1) of the Act for the County Board of Education to purchase bonds and flood insurance from a business which employs a Board employee's spouse who has no ownership interest in that business.


Chairman