

ADVISORY OPINION NO. 90-20

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A potential candidate for a seat on the County Board of Education

OPINION SOUGHT

Whether it is a violation of the Act for an individual to seek election or be elected to a County Board of Education when some of his children's businesses contract with the County Board of Education?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is a retired school teacher and would like to file his candidacy for election to the County Board of Education. He has three children and one daughter-in-law who are currently employed as teachers by the County Board of Education.

Oil Company

The requestor's daughter and son-in-law have a 50% interest in an oil company which contracts with the County Board of Education to provide fuel and related products. The total amount of sales by the oil company to the County Board of Education during the calendar year 1989 was approximately \$120,000.

Sporting Goods

The requestor's son owns a retail sporting goods business and supplies certain athletic equipment to various schools in the County. The requestor's son deals directly with the Athletic Directors in the various schools and the contracts for these goods are not considered by the County Board of Education members. The total amount of sales during the 1989 calendar year was approximately \$1,000.

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 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 over which he or she has direct authority...

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... an elected public official 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.

ADVISORY OPINION

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

1. If elected, the County Board of Education Member would be a public official with direct authority over a governmental agency, the County Board of Education.
2. 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.
3. Several family members have more than a limited interest in businesses that have public contracts with the governmental agency over which the requestor, if elected, would have direct authority.
4. For the purpose of this section "immediate family" is defined as a spouse residing in the individual's household or a dependent child or parent. It does not appear that the requestor's children are dependent on him within the meaning of the Act.
5. Therefore, it is not a violation of subsection (d)(1) of the Act for the requestor to seek or be elected to the County Board of Education when family members have more than a limited interest in the benefits or profits of a governmental contract with an agency over which he has direct authority, since they are not immediate family members as defined by the Act.

However, the requestor, if elected as a County Board of Education member should be mindful that nothing in this opinion shall be construed to state that other provisions in the Act such as subsections 5(b) or (e) are not applicable, should violations become evident to this commission.

Therefore, if elected the County Board of Education member should not reveal any confidential information acquired by him as a result of his position to further his or a member of his immediate family's interests.

Also, subsection (b)(1) requires the County Board of Education member not to intentionally use the prestige of his office for his own private gain or for that of another person.

Furthermore, the County Board of Education member should be aware of subsection 6B-2-1(c) which provides that all public officials and employees should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a particular matter when such matter becomes personal to them.

A handwritten signature in cursive script, appearing to read "Lee F. ...", is written above a horizontal line. Below the line, the word "Chairman" is printed in a serif font.

Chairman