

ADVISORY OPINION NO. 90-112

ISSUED BY THE

THE WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

Superintendent of County Board of Education

OPINION SOUGHT

Whether it is necessary for an exemption to be granted to allow a County Board of Education to continue to lease and/or purchase vehicles and parts from a car dealership which employs a County Board of Education member?

OTHER FACTS RELIED UPON BY THE COMMISSION

A member of a County Board of Education is employed by a car dealership, as the service manager. He has no ownership interest in the dealership. The Board member is a salaried employee and is on an incentive program based on all parts and labor sales for the dealership.

The dealership supplies the County Board of Education an automobile to use in the Drivers Education program. In return for the use of this automobile the dealership received \$990 annually to help offset the interest cost. The County Board of Education is responsible for any maintenance costs, repairs or body damage during the time the car is loaned to them.

Occasionally, parts for the County Board of Education vehicle fleet and vocational classes are purchased from this dealership.

The dealership has participated in a competitive bid process with other dealers in the area in situations where the County Board of Education has publicly bid for vehicles.

If the Commission determines a violation to exist, the County Board of Education has submitted a written request to the Commission for an exemption citing undue hardship and substantial interference.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected public official...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 which such official or employee may have direct authority to enter into, or over which he or she may have control.

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

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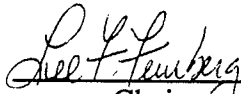
It is the Commission's opinion that the elected member of the County Board of Education may have direct authority or control over the letting of public contracts between the County Board of Education and the car dealership.

However, pursuant to subsection 6B-2-5(d)(2) of the Act, the County Board of Education member has a limited interest in the car dealership, since he is an **employee**.

For the purpose of this section, "limited interest" is defined as an interest not exceeding 10% of the outstanding shares of a corporation or \$30,000 interest in the profits or benefits of a public contract.

The Commission finds that it is not a violation of subsection 6B-2-5(d)(1) of the Act for the County Board of Education to contract with a car dealership which employs a County Board of Education member, since as an employee he has a limited interest in the dealership.

Therefore, it is not necessary for the Ethics Commission to consider the County Board of Education's exemption request for the reasons stated above.



Chairman