

ADVISORY OPINION NO. 90-134

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 2, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent of a County Board of Education

OPINION SOUGHT

Whether it is a violation of the Act for a County Board of Education to contract for the purchase of real estate from a Board of Education member's spouse?

OTHER FACTS RELIED UPON BY THE COMMISSION

A retired teacher of a County school system was elected to serve on the County Board of Education for a term beginning July 1, 1990. On September 15, 1989 which was prior to the effective date of the violations to be considered under the Ethics Act and prior to the retired teacher's election, the County Board of Education entered into a contract agreement with the current Board member's spouse and heirs to purchase a portion of real estate. The County Board of Education member's spouse will receive approximately \$13,500 as his share of the profit from the sale of the property.

This property was needed by the County Board of Education in order to establish a preschool system for disadvantaged and handicapped students. The County Board of Education is paying for the property over a period of four years, at \$10,000 per year. Federal program monies in the form of lease money are to be utilized for this purchase.

Although the contract for the purchase of the property was entered into and finalized prior to the County Board of Education member's election to office, the County Board of Education must vote on the payment of all bills and expenses each year (this includes the yearly installment payments on the contract).

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code Section 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 which such official...may have direct authority to enter into, or over which he or she may have control:

West Virginia Code Section 6B-1-2(c) states that...certain conflicts of interest are inherent in part-time public service...when such conflict becomes personal to a particular public official...such person 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 matter.

ADVISORY OPINION

Public Contracts

The Commission would note that the agreement between the County Board of Education and the County Board of Education member's spouse for the purchase/sale of real estate was entered into on September 15, 1989 which is prior to the effective date that violations are to be considered under the Act (see, subsection 6B-2-4(v)).

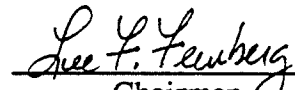
The agreement between the County Board of Education and the member's spouse was entered into prior to the County Board of Education member's election to office. Consequently the County Board of Education member did not have any authority or control over the letting of that particular contract.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Act for the School Board to make payments to the School Board member's spouse on a contract entered into prior to the School Board member's election.

Voting

The County Board of Education member should be mindful of subsection 6B-1-2(c) which provides that certain conflicts of interest are inherent in part-time service and the public official should not vote on a matter which becomes personal. The Commission considers a matter to be "personal" when the public official has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote or would give the appearance of impropriety.

Therefore, the Commission finds that the County Board of Education member should not vote on the payment of the annual sum set forth in the contract to her spouse and other heirs. Although this contract was entered into before she was elected the Commission considers the matter to be personal to her.



Chairman