

ADVISORY OPINION NO. 89-13

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

_____, County Board of Education Superintendent,

Opinion Sought

1. If a board employee owns a grocery store, may the board continue to purchase from that store?
2. May the board retain an attorney whose spouse is an employee of the board?
3. May the board purchase gasoline from a company which is owned, in part, by a board employee, providing the gasoline is advertised for bid and the bid is awarded in accordance with statute and board policy?
4. May the board employ as insurance agent a firm partially owned by a board employee who works in the board's personnel office and has access to all personnel records regarding attendance rates, workers' compensation claims, number of employees and dependents, etc.?
5. May the board use the printing service owned by a board employee with or without obtaining competitive bids?
6. May a board employee serve as an editor for a textbook company whose materials are subsequently purchased by the board?
7. May the board purchase books from a bookstore where a board member is employed on a part-time basis?
8. If the answer to Question #7 is no, then may the board continue to use the services of the U. S. Postal Service?

Other Facts Relied Upon By The Commission

The relevant facts are set forth in the Opinion Sought section above.

Pertinent Statutory Provisions Relied Upon By The Commission

West Virginia Code Section 6B-2-5(d)(1) states in part. . .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 Section 6B-1-3(d) states "immediate family" with respect to an individual means a spouse residing in the individual's household and any dependent or children and dependent parent or parents.

West Virginia Code Section 6B-2-5(d)(2) states in 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. . .A limited interest 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 Section 6B-2-5(d)(3) states 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 written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

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First, the Commission would note that the affected governmental body may make written application for exemption from subdivisions (d)(1) and (2) for any response set forth below if it can demonstrate a loss of quorum in the public body or agency, excessive cost, undue hardship, or other substantial interference with the operation of the governmental agency.

(1) No, the County Board of Education may not without exemption continue to purchase from the board employee's store since the board member is a public employee and will have an interest in the profits or benefits of a contract with the governmental body in which he or she...is employed in violation of West Virginia Code Section 6B-2-5(d)(1).

(2) No, the board may not without exemption retain an attorney whose spouse is a board employee since West Virginia Code Section 6B-2-5(d)(1) prohibits a public employee, or a member of her immediate family from having an interest in the profits or benefits of a contract with the governmental body with which she is employed.

(3) No, the board may not without exemption purchase gasoline from a company which is owned in part by a board employee since West Virginia Code Section 6B-2-5(d)(1) states in part...no public employee 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 is employed.

This response assumes the employee has more than a limited interest in ownership. West Virginia Code Section 6B-2-5(d)(2) defines a limited interest as not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is less.

(4) No, the board may not without exemption employ an insurance agent, who is in a firm partially owned by a board employee since West Virginia Code Section 6B-2-5 (d)(1) states in part...no public employee...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 which he or she is employed.

This response assumes the employee has more than a limited interest in ownership. West Virginia Code Section 6B-2-5(d)(2) defines a limited interest as not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is less.

(5) No, the board may not without exemption use a printing service owned by a board employee since West Virginia Code Section 6B-2-5(d)(1) prohibits a board member who is a public employee or a business with which he or she is associated from being a party to or having an interest in the profits or benefits of a contract with the governmental body over which he or she is employed.

However, if the printing services were advertised for competitive bid and the board member was the lowest bidder then the school board may make written application for exemption if it could demonstrate to use other bidders would result in excessive cost.

(6) A board member who is editor for a textbook company whose materials are purchased by the school board would fall under West Virginia Code section 6B-2-5(d)(1). Since the board member is an elected public official neither he nor a business with which he is associated may without exemption be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he has direct authority or is employed.

Subsection (d)(2) requires the individual to have more than a limited interest in the business with which he is associated and it is not apparent from the facts whether that is the case here.

(7) A board member who is employed on a part-time basis at a bookstore where the school board purchases books may fall under West Virginia Code section 6B-2-5(d)(1). Since the board member is an elected public official neither he nor a business with which he 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 has direct authority or is employed.

However, it is assumed that the part-time employee has a limited interest in the business and therefore the school board may purchase books from the bookstore without exemption.

8. Although a board member is employed by the United States Post Office the board may continue to use the United States Postal services since it is government owned and regulated.



Chairman