

ADVISORY OPINION 89-50

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

Counsel on behalf of a corporation providing bus and transportation services system

OPINION SOUGHT

Whether a corporation owned in part by two county school employees may continue to provide a County School Board of Education with buses and travel arrangements?

OTHER FACTS RELIED UPON BY THE COMMISSION

A corporation is owned by three individuals in equal shares. One stockholder, the father, generally has contact with the County Board of Education. One stockholder is a school teacher in the County system, and the other is a teacher and head basketball coach at a high school. Neither school employees have any involvement or communication with the County Board of Education with regard to actual decision-making policy. However, each school employee owns 33.3% of the corporation.

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 a... public employee or a member of his...immediate family or a business with which he...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 where the provisions of subdivision (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.

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

ADVISORY OPINION

Since the teachers are public employees, neither they nor any business which they are associated with may without exemption be a party to or have an interest in the profits and benefits of a public contract with governmental body with which they are employed.

Since both public employees have more than a limited interest, that is, an interest exceeding 10% of the outstanding shares of the corporation it would be a violation of subsection 5(d)(1) of the Act for the County School Board without exemption to contract with this corporation.

However, the affected governmental body may make written application to the Commission for exemption if it can show excessive cost, undue hardship or substantial interference with the governmental body.



Chairman