

ADVISORY OPINION 89-52

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

A County Board of Education

OPINION SOUGHT

Whether the Ethics Commission should grant an exemption either permanently or for 1990, which would allow the County Board of Education to utilize a sanitation service as the garbage collection service for its facilities?

OTHER FACTS RELIED UPON BY THE COMMISSION

1. There is no legal landfill in the County, thus requiring all such garbage to be taken to an out-of-county site.
2. This Sanitation company is the public provider of this service for the County as authorized by the West Virginia Public Service Commission. Therefore, there are no other companies for the County Board of Education to contract with for this service.
3. The spouse of the garbage service company owner is employed as a teacher and has no input as to what vendor might possibly be used by the County Schools.
4. In order for this garbage service to be provided, should the Sanitation company be excluded, it would require the County Board of Education to purchase an expensive garbage collection vehicle and the employment of two additional employees to perform this service.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

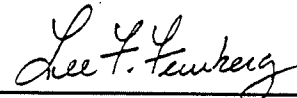
West Virginia Code Section 6B-2-5(d)(1) states in part that...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority or with which he or she is employed.

West Virginia Code Section 6B-2-5(d)(3) states that where the provisions of subdivision (1) 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 subdivision (1).

EXEMPTION

The Commission grants the County Board of Education an exemption to utilize the services of the Sanitation company until any circumstances that the School system relied upon in seeking the exemption would substantially change.



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Chairman