

ADVISORY OPINION NO 89-54

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

Superintendent and Secretary to a County Board of Education

OPINION SOUGHT

Whether there would be a conflict of interest under the Act if a state Correctional Center purchased merchandise from a business owned by a County Board of Education member, when the County Board of Education was the fiscal agent for the Center's educational program?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County may have one or more Board of Education members who would be doing business with or selling goods to both the Correctional Center and the Educational Program in the Correctional Center. The County Board of Education is acting as the fiscal agent for the Correctional Center's Educational Program.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that. . . no elected or appointed 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 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)(2) states in pertinent part that...an elected or appointed public official...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, or an interest as a creditor not exceeding ten percent of the total indebtedness of a business or thirty thousand dollars, whichever is the lesser.

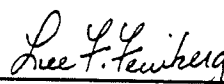
West Virginia Code Section 6B-2-5(d)(3) states that where the provisions of subdivision (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, 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.

ADVISORY OPINION

Since the board members are public officials, neither they nor any business 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 over which they have direct authority pursuant to subsection 5(d)(1) of the Act. The Commission considers the Board of Education acting as fiscal agent for the correctional Center's educational program as having direct authority over that program, but not the Center.

Also, it is assumed that the board members have more than a limited interest in the businesses as defined in subsection 5(d)(2).

However, the affected governmental body may make written application for exemption to the Commission pursuant to 5(d)(3) if it can show excessive cost, undue hardship or substantial interference with the governmental body would result by application of provision (d)(1).



Chairman