

ADVISORY OPINION NO. 89-115

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

Superintendent of a County Board of Education

OPINION SOUGHT

Exemptions are sought in the following matters:

1. A new car dealership is owned by a County teacher's spouse. This dealership is the only new car dealership in the County and supplies the County School System with Driver Education vehicles free of charge. Also, the County School Board must on occasion, purchase replacement parts from this dealership for the repair of County School buses.

The County School Board has applied for an exemption in this matter citing excessive cost and substantial interference. The car dealership is the only dealership located in the County. If the County School System is unable to purchase parts from the local dealership, it creates unnecessary expense and substantial interference because a Board of Education employee must travel to another County to purchase the parts required, particularly in emergency situations.

2. A local hardware company is one of three small supply companies located in the County. The Co-owner of the store is the spouse of a County Board of Education employee, a cook at an elementary school. The business is a home supply business, providing plumbing, electrical and other small parts and materials.

The County School Board has applied for exemption in this matter citing excessive cost, undue hardship and substantial interference. Since the three companies have existed and competed for a number of years, each has begun to specialize in certain areas. There are now some items which are not found in the other stores, such as; commercial size equipment and other heating, plumbing and electrical supplies.

It creates undue hardship, substantial interference and excessive cost for the County Board of Education to travel to other areas of the County to make the required purchases.

3. A gas service station (hereafter referred to as station A) is located in a rural section of the County. The two County school buses which serve that area are parked at this location since it is located near a bus route and security for the buses is provided. Because the buses remain in this area, fuel is purchased from service station A. The gas station is owned by the spouse of a County Board of Education employee, a high school teacher.

The County Board of Education has applied for an exemption citing undue hardship and substantial interference. The service station is located in a rural area, the buses which operate in the area are parked at the station for convenience and security. The buses are parked at this station and they purchase fuel at this location because it is more convenient and efficient and to do otherwise would result in excessive costs.

4. Another gas service station (hereafter referred to as station B) is also located in a rural section of the County. The bus which serves the area is parked at this location since it is located near the bus route and security for the bus is provided. Because the bus remains in this area, fuel is purchased from service station B. The station is owned by a County Board of Education employee, a high school teacher.

The County Board of Education has applied for an exemption citing undue hardship and substantial interference. Service station B is located in a rural area, the bus which operates in the area is parked at the station for convenience and security. Fuel is purchased at this location because it is more convenient and efficient.

5. Another gas service station (hereafter referred to as station C) is located near the central bus maintenance facility. During emergency situations fuel has been purchased by the County School Board at this location. Gas service station C is owned by a County Board of Education employee, a school bus driver.

The County School Board has applied for an exemption citing undue hardship. Few purchases are made at this location, but occasionally there are emergency situations when fuel tanks at the bus garage are blocked or inoperable for various reasons, and fuel is purchased at this location.

6. A printing shop (hereafter referred to as printing shop A) utilized by County Board of Education is owned by the spouse of a County School Board employee, a junior high school teacher.

The County School Board has applied for an exemption citing undue hardship and excessive cost. There are only three printing companies in the County which operate off-setting printing equipment. There is often a need for overnight printing which can only be accomplished efficiently by the local County printers. Since most printing jobs are bid on a competitive basis the exemption

would allow for more efficient printing and a decrease in cost to the County School Board.

7. Another printing shop (hereafter referred to as print shop B) utilized by County Board of Education is owned by the spouse of a County School Board employee, a high school teacher.

The County School Board has applied for an exemption citing undue hardship and excessive cost. There are only three printing companies in the County which operate off-setting printing equipment. There is often a need for overnight printing which can only accomplished efficiently by the local County printers. Since most printing jobs are bid on a competitive basis the exemption would allow for more efficient printing and a decrease in cost to the County School Board.

8. Another printing shop (hereafter referred to as print shop C) utilized by County Board of Education is owned by the spouse of a County School Board employee, a school bus operator.

The County School Board has applied for an exemption citing undue hardship and excessive cost. There are only three printing companies in the County which operate off-setting printing equipment. There is often a need for overnight printing which can only accomplished efficiently by the local County printers. Since most printing jobs are bid on a competitive basis the exemption would allow for more efficient printing and a decrease in cost to the County School Board.

OTHER FACTS RELIED UPON BY THE COMMISSION

The County in which the Board of Education is located in is a poor rural county with a low tax base, no excess levy, high unemployment rate and a limited number of local businesses. The County School System is the highest employer in the County. A majority of the purchases are made through competitive bidding. Due to limitations with revenue and warehousing it is impossible for the County School Board to maintain a complete inventory of parts and supplies needed in the daily operations of the County School System. There are also emergency situations which occur that require immediate purchasing of supplies and repair parts.

The schools in this County have been consolidated. There are eight elementary schools located throughout the county in rural settings. The buses start at the outer boundaries of the County and run toward the center terminating their route at the junior and senior high schools. Several buses serve as feeder buses and remain to serve the elementary school in that area. For economic purposes, the bus maintenance program has been centralized through the use of a central bus garage and fuel station. It is more economical for the buses that remain in the outlying area to purchase gas in that area rather than travel to the central bus maintenance station for this purpose.

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... 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 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 in pertinent part 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...county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption...

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsection (d)(1) and (2) follows:

1. Since the new car dealership is owned by the spouse of a Board of Education employee, it would be a violation of subsection (d)(1) of the Act for the County School Board to continue to purchase services and parts from this dealership.

However, the County School Board has applied for an exemption citing excessive cost and substantial interference because it creates unnecessary expense and increased travel time if they are forced to contract with a dealership in another County.

The Commission finds that excessive cost and substantial interference would result if the provisions of subsection (d)(1) of the Act were to be enforced. Therefore, the Commission hereby grants the requested exemption.

2. Since the co-owner of the hardware store is the spouse of a County Board of Education employee and assuming he has more than a limited interest in the business, it would be a violation of subsection (d)(1) of the Act, for the County Board of Education to continue to contract for supplies from this company.

However, the County School Board has applied for an exemption citing excessive cost and undue hardship because this store specializes in certain materials not found in other stores. Thus it would create undue hardship and excessive cost if the Board had to search hardware stores outside the immediate area for the needed supplies.

The Commission finds that excessive cost and undue hardship would result if the provisions of subsection (d)(1) of the Act were to be enforced. Therefore, the Commission hereby grants the requested exemption for the items listed.

3. Since service station (A) is owned by the spouse of a County Board of Education employee, it would be a violation of subsection (d)(1) of the Act for the County Board of Education to continue to purchase fuel from this station.

However, the County School Board has applied for an exemption citing undue hardship and substantial interference because this station is located on the rural area bus route. It would cause significant interference and undue hardship to the County School Board if it is forced to have the bus return to the central maintenance station at the end of each day.

The Commission finds that undue hardship and substantial interference would result if the provisions of subsection (d)(1) of the Act were to be enforced. Therefore, the Commission hereby grants the requested exemption.

4. Since service station (B) is owned by the spouse of a County Board of Education employee, it would be a violation of subsection (d)(1) of the Act for the County Board of Education to continue to purchase gas from this station.

However, the County School Board has applied for an exemption citing undue hardship and substantial interference because this station is located on the rural area bus route. It would cause significant interference and undue hardship to the County School Board if it is forced to have the bus return to the maintenance station at the end of each day.

The Commission finds that undue hardship and substantial interference would result if the provisions of subsection (d)(1) of the Act were to be enforced. Therefore, the Commission hereby grants the requested exemption.

5. Since service station (C) is owned by the spouse of a County Board of Education employee, it would be a violation of subsection (d)(1) of the Act for the County Board of Education to continue to purchase fuel from this station.

However, the County School Board has applied for an exemption citing undue hardship and substantial interference. Although the service station is located near the bus maintenance garage, gas is purchased from service station C during emergency situations. It would cause undue hardship and substantial interference to the County Board of Education if they could not purchase fuel from the station on such occasions.

The Commission finds that undue hardship and substantial interference would result if the provisions of subsection (d)(1) of the Act were to be enforced. Therefore, the Commission hereby grants the requested exemption.

6. Since printing shop (A), utilized by the County Board of Education is owned by the spouse of a County School Board employee, it would be a violation of subsection (d)(1) of the Act for the County Board of Education to continue to contract with the facility.

However, the County Board of Education has applied for an exemption citing undue hardship and excessive cost, because there is often a need for overnight printing services which can only be obtained efficiently from local printing shops. Also the bids are awarded on the basis of cost, therefore the County Board of education would be unable to accept the lowest bid if it was offered by this printing shop, thus resulting in excessive cost.

The Commission finds that undue hardship and excessive cost would result if the provision of subsection (d)(1) of the Act were to be enforced. Therefore, the Commission hereby grants the requested exemption.

7. Since printing shop (B), utilized by the County Board of Education is owned by the spouse of a County School Board employee, it would be a violation of subsection (d)(1) of the Act for the County Board of Education to continue to contract with the facility.

However, the County Board of Education has applied for an exemption citing undue hardship and excessive cost, because there is often a need for overnight printing services which can only be obtained efficiently from local printing shops. Also the bids are awarded on the basis of cost, therefore the County Board of education would be unable to accept the lowest bid if it is offered by this printing shop, thus resulting in excessive cost.

The Commission finds that undue hardship and excessive costs would result if the provision of subsection (d)(1) of the Act were to be enforced. Therefore, the Commission hereby grants the requested exemption.

8. Since printing shop (C), utilized by the County Board of Education is owned by the spouse of a County School Board employee, it would be a violation of subsection (d)(1) of the Act for the County Board of Education to continue to contract with the facility.

However, the County Board of Education has applied for an exemption citing undue hardship and excessive cost, because there is often a need for overnight printing services which can only be obtained efficiently from local printing shops. Also the bids are awarded on the basis of cost, therefore the County Board of education would be unable to accept the lowest bid if it is offered by this printing shop, thus resulting in excessive cost.

The Commission finds that undue hardship and excessive costs would result if the provision of subsection (d)(1) of the Act were to be enforced. Therefore, the Commission hereby grants the requested exemption.


Chairman