

ADVISORY OPINION NO. 89-105

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

Superintendent for a County School Board of Education

OPINION SOUGHT

Whether a County School Board of Education should ask vendors if any County public employee's relatives work for the vendors?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Board of Education contracts with various vendors who supply the area schools. The Superintendent asks if he should verify with the vendors that they do not have a relative employed with the company contracting with the County Board of Education.

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...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-1-3(d) states in pertinent part that..."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.

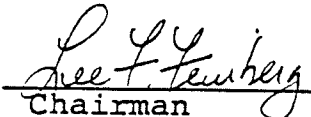
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An analysis of the facts presented and the pertinent statutory provisions of (d)(1) and (d)(2) follows:

1. No public employee, immediate family member or business with which he is associated may be a party to or have more than a limited interest in the profits or benefits of a contract with the governmental agency with which he is employed.
2. For the purpose of this section, limited interest is defined as an interest not exceeding (10) ten percent of the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.
3. The key to deciding if a violation exists is not whether a "relative" may be employed by a vendor, but whether an "immediate family" member has more than a limited interest in the business.
4. For the purpose of this section "immediate family" refers to a spouse residing in the individual's household and any dependent child or parent.

The Commission applauds the diligence and affirmative action on the County School Board's part in identifying potential conflicts of interest by requiring vendors to disclose ownership interests (if over 10% or \$30,000) of immediate family members of County school employees or County Board of Education members. The Commission will not require any particular practice to be used in gathering the information from vendors and will leave that to the County's discretion.

Another issue arises when a vendor falsely verifies there is no immediate family member of a County school employee or County Board of Education member contracting with the County Board of Education and it is later determined that is not correct. In that instance, the Commission would certainly consider in determining whether there is a violation the reasonable attempt on the County School Board's part to act in good faith and obtain the necessary information to avoid a conflict of interest.

  
Chairman