

ADVISORY OPINION NO. 96-33

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 11, 1996

PUBLIC SERVANT SEEKING OPINION

Business Manager/Treasurer of a County Board of Education

OPINION SOUGHT

Is it a violation of the Ethics Act or West Virginia Code 61-10-15 for a County Board of Education to conduct business with a company which employs a family member of the Business Manager/Treasurer of that School System?

FACTS RELIED UPON BY THE COMMISSION

The requester is employed as the Business Manager/Treasurer of a County Board of Education. Although the purchasing system is decentralized with each Department Head or Administrator approving the purchases for their individual Department, the requester is responsible for the business affairs of the school system, including the issuance of all purchase orders.

The requester's daughter began working for a company in a clerical position which does not involve commission sales. The company may, on occasion, conduct business with the County Board of Education. As an employee of that company, she is participating in the company's employee stock purchase plan and has medical insurance through this employer.

The requester has stated that his daughter is twenty-three years of age and lives at his residence. Since his daughter is a student, the requester is carrying her on his medical, dental and optical insurance. However, he does not claim her as a dependent on his income tax, he does not contribute toward her education costs, nor does he provide her with an allowance. Further he is not a cosigner on any debt which she may have.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) provides in pertinent part that... A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person...

West Virginia Code 6B-2-5(d)(1) provides 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 which such official or employee may have direct authority to enter into, or over which he or she may have control...

West Virginia Code 6B-1-3(d) provides 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.

West Virginia Code Section 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...or any member of any other county or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control...

ADVISORY OPINION

The Ethics Act

The Ethics Act prohibits public servants from being a party to or having an having more than a limited personal financial interest in a public contract which their public position gives them authority to award or control. The prohibition extends to the members of the public servants' immediate family.

The Treasurer/Business Manager of the County Board of Education has control over the business affairs of the school system, including the issuance of all purchase orders. It would be a violation for him, or the members of his immediate family, to be a party to or have more than a limited financial interest in School Board's contracts with or purchases from private vendors.

The Ethics Act defines "immediate family" to include the public servant's spouse and **dependent** children - the prohibition does not apply to emancipated children who are not financially dependent on their parents.

Based upon the facts recited above, the Commission finds that although the requester's twenty-three year old daughter resides at his home, she does not rely upon him for her financial support and is not a "dependent" child. It would therefore not be a violation of the Ethics Act for the School Board to purchase supplies or equipment from the company which employs the requester's daughter.

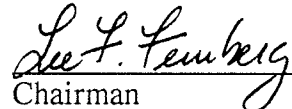
WV Code § 61-10-15

WV Code § 61-10-15 applies a similar, but stricter, prohibition against private interests in public contracts. It prohibits certain county personnel, including school board treasurer/business managers, from having a personal financial interest in a public contract over which their public position gives them "voice, influence or control".

As with the Ethics Act, the control exercised by the Treasurer/Business Manager over the business affairs of the County Board of Education is sufficient to make it a violation for the requester to have a direct or indirect financial interest in the contracts or purchases of the school board.

Unlike the Ethics Act, WV Code §61-10-15 makes no reference to the public servant's spouse or children, but prohibits the public servant from having a direct or indirect interest in a contract. If the respondent's daughter were financially dependent upon him, he would be considered to have an indirect financial interest in his daughter's employment contract, and through that employment relationship an indirect financial interest in her employer's sales to the school board.

However, under these facts the Commission finds that the Respondent's daughter is emancipated and is not dependent on him for financial support and it would not be a violation of WV Code § 61-10-15 for the company which employs her to do business with the school board.


Chairman