

ADVISORY OPINION NO. 89-71

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

An attorney on behalf of a County School Board of Education

OPINION SOUGHT

Whether it would be a violation of the Act for an attorney, whose spouse is a teacher employed by a County Board of Education to represent the county school administration and also on occasion, the Board of Education members?

OTHER FACTS RELIED UPON BY THE COMMISSION

From 1981 until 1983 this attorney was an Assistant Prosecutor for the County and had job responsibilities specifically including representation of the County Board of Education.

On July 1, 1984, the Board of Education began privately contracting with the attorney to provide legal services and act as legal counsel to the Board of Education's administrative staff and, on a case-by-case basis to represent the Board of Education. The contract has been renewed through the 1988-89 school year. The highest income the attorney has received as a result of his being counsel to the school system in any one year was approximately \$16,000.00.

Subsequently, on June 17, 1985, that attorney's spouse was hired by the Board of Education as a gifted education teacher. The teacher has no influence, voice, or control over the Board of Education in its actions and has no direct authority in any capacity over the administration of the school system or the school board.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no... public employee or member of his or her immediate family...may be a party to or have an interest in the profits or benefits of a contract with the governmental body...with which he or she is employed: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

West Virginia Code 6B-1-3(d) states that "immediate family", with respect to an individual, means a spouse residing in the individual's household...

#### ADVISORY OPINION

An analysis of the facts presented and pertinent statutory provision of West Virginia Code 6B-2-5(d)(1) follows:

1. The teacher is a public employee, since she is employed by the County School Board.
2. A member of her immediate family (spouse) has a public contract with the County Board of Education to act in a legal capacity representing at times the County School Board and the administration.
3. For the purpose of this section immediate family is defined to include a spouse residing in the individual's household.
4. The teacher's spouse has an interest in the benefits of a contract with a governmental agency with which she employed.
5. Therefore, pursuant to subsection (d)(1) it would be a violation of the Ethics Act for the attorney contract with the School Board of Education.
6. However, the governmental body may make written application for exemption if it can demonstrate that one of the following would result if the provisions of (d)(1) and (2) were applied: excessive costs, undue hardship, substantial interference with the governmental body or loss of quorum.

The Commission would also note that the first proviso in subsection (d)(1) states that nothing in this Act shall be construed to prevent the employment of any person with any governmental body.

Therefore, it would not be a violation of the Act for the School Board to employ the attorney on a full time or part-time basis as long as it was an actual bona fide employment relationship.

However, this individual is not considered an employee for a number of reasons including the fact that he does not receive any employment benefits; such as retirement, health care benefits, vacation, or sick leave time.

Lee F. Lambert  
Chairman