

ADVISORY OPINION NO. 89-90

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

A Business Manager for a County Board of Education

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County Board of Education to purchase items from businesses that "employ" a spouse of a Board of Education employee.

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Board of Education purchases items or services from various companies. Two companies have employees that are spouses of Board of Education secretaries. One secretary's spouse is a manager of a lumber and hardware company. The other secretary's spouse is a clerk in a general store.

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 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...with which he or she is employed.

West Virginia Code 6B-2-5(d)(2) states in pertinent part that...a 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 or shareholder. 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.

ADVISORY OPINION

An individual who is "employed" by a business without any ownership or other interest does not have an interest in the business within the meaning of the statute.

Therefore, it would not be a violation of subsections (d)(1) and (2) for the County Board of Education to contract with businesses that "employ" spouses of County Board of Education secretaries.

Dee F. Feinberg
Chairman