

ADVISORY OPINION NO. 89-106

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Department Employee

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a State Department to contract with a company owned by a State employee's spouse?

OTHER FACTS RELIED UPON BY THE COMMISSION

A public employee's spouse owns a vending company. The State Department which employs her husband has approached the owner of a company about installing a vending machine in the Department's office, for both the public and employees' use.

Additional information is being sought regarding the contractual arrangement between the spouse and the State Department.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...no 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, 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...excessive cost, undue hardship, or other substantial interference with the operation of...a state 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 provision of West Virginia Code 6B-2-5(d)(1) follows:

1. The individual is a public employee, who is employed by a State Department.
2. A member of the employee's immediate family (spouse) owns a business that would have a public contract with the State Department with which he is employed.
3. For the purpose of this section, an immediate family member is defined as a spouse residing in the individual's household.
4. The spouse has more than a limited interest in the benefits and profits of a public contract with the governmental agency that employs her husband.
5. For the purpose of this section, a limited interest is defined as, ten percent of outstanding shares issued by a corporation or thirty thousand dollars whichever is the lesser.
6. Therefore, it would be a violation of subsection (d)(1) of the Act for the State Department to contract, without exemption, with a company owned by the State Department employee's spouse.
7. However, the affected governmental body may make a written application to the Commission for an exemption if it can show that excessive cost, undue hardship or other substantial interference would result if the exemption is not granted.

  
Chairman