

ADVISORY OPINION NO. 89-119

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Board

OPINION SOUGHT

Whether it is a violation of the Act for a State Board to conduct business with a textbook publishing company which employs a State Board staff member's son?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public employee's position with the State Board is Coordinator of Textbook Adoption. In this position the employee is responsible for coordinating a list of approved textbooks and providing this list to the County Boards of Education for their discretionary use in purchasing.

The public employee's son is the State representative for a major publishing company which does substantial business in the textbook area in the State.

Neither the State Department, nor the public employee makes the final determination as to which textbooks are purchased by the County School Boards. The public employee acts as a staff member to the Textbook Advisory Committee, but does not participate in the deliberations, nor vote.

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-2-5(d)(2) states in pertinent part that... a public employee or a member of his or her immediate family...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(b)(1) states in pertinent part that... a public employee may not 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.

ADVISORY OPINION

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

1. The Textbook Coordinator is a public employee, since he is employed by a State Board.
2. A member of the employee's family has an interest in the profits or benefits of a public contract with the governmental body with which he is employed.
3. However, the public employee's son would not be considered an immediate family member since he is not a dependent child.
4. Furthermore, the son is an employee of the publishing company and has a limited interest in the public contract.
5. For the purpose of this section "limited interest" is defined as an interest not exceeding ten percent of the outstanding shares of stock in a corporation or thirty thousand dollars whichever is the lesser.
6. Therefore, it is not a violation of subsection (d)(1) of the Act for a State Board to conduct business with a company which employs a State Board staff member's son.

However, the State employee should be mindful of subsection (b)(1) of the Act which prohibits the use of his office or prestige for his own private gain or that of another. It would be a violation of the Act for the staff member to use his position as State Coordinator of Textbook Adoption for his son's gain in any manner with the publishing company or otherwise.


Chairman