

ADVISORY OPINION NO. 90-08
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON FEBRUARY 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

Superintendent for a County Board of Education

OPINION SOUGHT

1. Whether it is a violation of the Act for a County Board of Education member to be employed by an accounting firm which audits individual County school accounts?
2. Whether it is a violation of the Act for a School Board member's spouse to be employed with a company which contracts with the County Board of Education?

OTHER FACTS RELIED UPON BY THE COMMISSION

Accounting Firm

A member of the County Board of Education is employed by an accounting firm which audits individual school accounts. The employee has no decision making capacity in the firm and no ownership interest.

Nursing service

The County Board of Education contracts with a regional Health Department to provide school nurse functions. A County Board of Education member's spouse is employed by this regional Health Department as a school health nurse and is assigned to this County. The spouse is not involved in the management of the company and has no ownership interest.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected or appointed public official or 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 over which he or she has direct authority...

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... an elected or appointed public official or 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.

ADVISORY OPINION

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

a. The County Board of Education member is a public official with authority over a governmental agency, the County Board of Education.

b. The Board Member is associated with a business (accounting firm) which has a public contract with the agency over which he has direct authority.

c. The Board Member has a limited interest in the accounting firm, since he has no ownership interest in it.

d. For the purpose of this section "limited interest" is defined as an interest not exceeding 10% of the outstanding shares of stock in a corporation or thirty thousand dollars, whichever is the lesser.

e. Therefore, it is not a violation of subsection (d)(1) of the Act for the County Board of Education to contract with an accounting firm which employs a County Board of Education Member.

However, the County Board of Education Member should be mindful of subsection 6B-1-2(c) which states that...when a matter becomes personal to a particular public official, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

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

a. The County Board of Education Member is a public official with direct authority over a governmental agency, the County Board of Education.

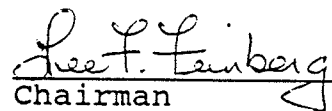
b. An immediate family member is associated with a business that has a public contract with the governmental agency over which the Board Member has direct authority.

c. For the purpose of this section "immediate family" is defined as a spouse residing in the individual's household.

d. However, the immediate family member has a limited interest, since she is an **employee** with no ownership interest in the regional Health department.

e. For the purpose of this section "limited interest" is defined as an interest not exceeding ten percent of the outstanding shares of stock issued by a corporation or thirty thousand dollars, whichever is the lesser.

f. Therefore, it is not a violation of subsection (d)(1) of the Act for a County Board of Education Member's spouse to be employed with a company which contracts with the County Board of Education.


Chairman