

ADVISORY OPINION NO. 90-15

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Administrator of a City Hospital

OPINION SOUGHT

Whether it is a violation of the Act for a registered nurse to be employed by a City owned Hospital, when her spouse has more than a limited interest in a law firm which contracts with the City?

OTHER FACTS RELIED UPON BY THE COMMISSION

A registered nurse has applied for employment with a City owned Hospital. The nurse's spouse has more than a 10% partnership interest in a law firm which contracts with the City to provide legal services to the City Hospital.

The nurse does not have direct authority over nor control of the letting of public contracts for the City Hospital.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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 which such employee may have direct authority to enter into, or over which he or she may have control.


West Virginia Code Section 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 subsection is:

- (A) An interest:
 - (i) not exceeding ten percent of the partnership or the outstanding shares of a corporation; or
 - (ii) not exceeding thirty thousand dollars interest in the profits or benefits of the contract;

ADVISORY OPINION

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

1. If hired, the registered nurse would be a public employee of a City owned Hospital without direct authority or control over the letting of public contracts.
2. A member of the public employee's immediate family has an interest in the benefits or profits of a public contract with the Governmental agency with which she would be employed.
3. For the purpose of this section "immediate family" refers to a spouse residing in the individual's household.
4. As a partner in a law firm having more than a 10% partnership interest, the immediate family member has more than a limited interest in the public contract with the City.
5. For the purpose of this section "limited interest" is defined as an interest not exceeding 10% of the partnership or an interest not exceeding thirty thousand dollars in the profits or benefits of a public contract.
6. However, it would not be a violation of subsection 6B-2-5(d)(1) of the Act for the City Hospital to employ the registered nurse, since she does not have direct authority or control over the letting of public contracts on behalf of the City.


Vice-Chairman