

ADVISORY OPINION NO. 90-33

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Purchasing Director for a University

OPINION SOUGHT

1. Whether it is a violation of the Act for a University Purchasing Director to sell a computer to an individual who works for a firm that does business with the University?
2. Whether it is a violation of the Act for the University Purchasing Director's business to sell computers to the University, when they are paid for by the University Foundation?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public employee is the Director of Purchasing at a University. He signs all purchase orders for the University over \$400. He also has started a computer and software business. Each year the University purchases a personal computer for certain recognized Scholars.

The computers are paid for by the University Foundation. The public employee has no involvement with the Foundation. The Foundation has its own purchasing agent and system. This public employee does not see nor sign any Foundation purchase orders. However, the University's Receiving Department does receive and deliver all of the Foundation's merchandise shipments.

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 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 over which he or she has direct authority or with which he or she is employed...

West Virginia Code Section 6B-2-5(d)(2) states that in the absence of bribery or a purpose to defraud...a public employee...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 Section 6B-2-5(d)(3) states that where the provisions of subdivision (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

#### **ADVISORY OPINION**

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

a. The requestor is a public employee acting as the Director of Purchasing at a University and has direct authority over University contracts.

b. The Purchasing Director has more than a limited interest in the benefits or profits of a private contract with an individual.

c. However, the public employee's company is not contracting with the governmental agency with which he is employed.

d. Therefore, it is not a violation of subsection (d)(1) of the Act for a public employee's company to contract with a private individual who may be known to him through his public employment.

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

a. The requestor is a public employee acting as the Director of Purchasing at the University. He is not employed by the University Foundation.

b. The Director has more than a limited interest in the benefits or profits of a contract with a University Foundation.

c. The University Foundation is not part of the governmental agency over which the employee has direct authority, or by which he is employed.

d. Therefore, it is not a violation of subsection (d)(1) of the Act for the public employee to contract with an agency over which he does not have direct authority.

However, the public employee should be mindful of subsection 5(b)(1) of the Act which prohibits a public employee from using his office or prestige for private gain.

Also, subsection 5(e) prohibits a public employee from disclosing or knowingly using to further his or another's interest confidential information acquired by him in the course of his employment.

  
Chairman