

ADVISORY OPINION NO. 90-37

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A public employee

OPINION SOUGHT

Whether it is a violation for a County Board of Education to contract with a business that employs a teacher's spouse?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public employee is employed as a full-time teacher at a High School by a County Board of Education. The teacher's spouse is a sales representative with a sporting goods store. The Board of Education is a customer of the business where the public employee's spouse and son are sales representatives. Neither the public employee nor his family are owners or co-owners of the business.

The business carries a variety of sports gear, such as trophies, plaques, jackets, etc.

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 with the governmental body over which he or she is employed...

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 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

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

a. The requestor's spouse is a public employee since she is employed as a teacher by the County Board of Education.

b. An immediate family member is associated with a business that has a public contract with the governmental agency with which the teacher is employed.

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

d. The public employee's spouse does not have more than a limited interest in the benefits or profits of a public contract, since he is an employee and has no ownership interest.

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 to contract with a business that **employs** a teacher's spouse.



CHAIRMAN