

ADVISORY OPINION NO. 90-38

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A public employee

OPINION SOUGHT

Whether an exemption should be granted to allow a public employee's spouse's business to contract with a Community College?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public employee is a full-time faculty member of a State College. The public employee's spouse is a sole proprietor of a small computer store. Until July of 1989 the spouses's company was doing business with the State Community College. At that time the public employee was informed by the Community College's purchasing agent that they could no longer purchase computer-related equipment or supplies from the employee's spouses's store.

Neither the public employee nor her spouse have ever been connected with the purchasing department at the Community College. They have no influence over the College's purchasing decisions.

The affected governmental body has requested an exemption. There is a limited number of qualified computer instructors in the area.

This business is one of only three established computer dealers in the area. Since the requestor's company has not been able to do business with the College, other area vendors have been able to demand a higher price for their goods.

Also, it will be necessary for the College to seek repairs for the computer equipment from a firm in Pittsburgh at an inflated price. The requestor's business is the only authorized repair center for these machines within a fifty-mile radius.

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 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...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...

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.

West Virginia Code Section 6B-1-3(d) states that "immediate family", with respect to an individual, means a spouse residing in the individual's household and any dependent child or children and dependent parent or parents.

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsections (d)(1), (2) and (3) follows:

- a. The requestor's spouse is a public employee since she is employed by a State Community College.
- b. Since the public employee's spouse is the sole proprietor of the company, he has more than a limited interest in a company contracting with a governmental agency which employs his spouse.
- c. 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.
- d. For the purpose of this section "immediate family" is defined as a spouse residing in the individual's household.
- e. Therefore, it is a violation of subsection (d)(1) of the Act for a State College to contract with a business owned by an employee's spouse.

f. However, the affected governmental body has submitted a written application for exemption to the Commission and the Commission hereby grants such exemption.

Lee F. Fenberg

CHAIRMAN