

ADVISORY OPINION NO. 90-40

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent for a County Board of Education

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

Neither the public employee nor his family are owners or co-owners of the business.

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 with 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 is the Superintendent of the County Board of Education making a request on behalf of the teacher's spouse.
- b. An immediate family member is associated with a business that has a public contract with the governmental agency that employs the teacher.
- 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 in the business.
- 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.

*Lee F. Feinberg*

CHAIRMAN