

ADVISORY OPINION NO. 90-41

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Superintendent

OPINION SOUGHT

Whether an exemption should be granted to allow a County Board of Education to contract with a public employee's spouse's business?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public employee is a full-time public school teacher employed by a County Board of Education. His wife is owner and sole proprietor of a company which does business with the County Board of Education.

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...

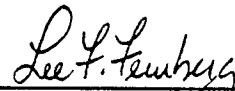
West Virginia Code Section 6B-2-5(d)(2) states that...a public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or 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...

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

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

- a. Since the teacher is employed by the County Board of Education, she is a public employee.
- b. An immediate family member is associated with a business that has a public contract with the governmental agency which 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 immediate family member has more than a limited interest in the business as the owner and sole proprietor of the company.
- 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 a violation of subsection (d)(1) of the Act for the County Board of Education to contract with a County Board of Education employee's spouse.
- g. However, the affected governmental body has submitted a written application to the Commission for an exemption citing undue hardship and excessive costs.
- h. The Commission finds that undue hardship and excessive costs would result from enforcement of the provisions in subsection (d)(1). Therefore, the Commission hereby grants the requested exemption.



Chairman