

ADVISORY OPINION NO. 90-53

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee's Spouse

OPINION SOUGHT

Whether it is a violation of the Act for a County public employee's spouse's business to contract with the County Board of Education?

OTHER FACTS RELIED UPON BY THE COMMISSION

A public employee's spouse operates a sporting goods business and contracts with the County Board of Education. This is the only sporting goods business in the County. To comply with the Ethics Act the County Board of Education is currently purchasing their sporting goods at stores located 45 to 50 miles away.

Since August 1989 the requestor's spouse has been employed by the County Board of Education as a homebound teacher. The teacher does not have any influence, control, or authority regarding purchasing or the letting of County contracts, nor is she involved in any way with the county schools' athletic teams.

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 which such...employee may have direct authority to enter into, or over which he or she may have control.

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 subsection is:

- (A) An interest:
  - (i) not exceeding ten percent of the partnership or the outstanding shares of a corporation; or
  - (ii) not exceeding thirty thousand dollars interest in the profits or benefits of the contract...

#### 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 without direct authority or control over the letting of County contracts.
- b. The teacher's immediate family member owns 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 interest in the profits or benefits of the public contract.
- f. However, it is the Commission's opinion that it is not a violation of subsection 6B-2-5(d)(1) of the Act for the County Board of Education to contract with a County employee's spouse, since the teacher does not have direct authority to enter into nor control over the letting of the public contract.

  
Chairman