

ADVISORY OPINION NO. 90-83

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Public Employee

OPINION SOUGHT

Whether it is a violation of the Act for County public employees to publish and sell a book to County schools?

OTHER FACTS RELIED UPON BY THE COMMISSION

During the summer of 1989, three County teachers wrote and published a book designed to teach school age children about the states, their capitol cities and locations. A substantial amount of the work (such as collating and binding) was done by the teachers to save costs.

Before they began selling the book, they met with school officials on both State and County levels and received a positive response. The officials recommended that the teachers go directly to each individual school to demonstrate and sell the book. The individual schools use funds from snack machines, book sales and other fund-raisers to purchase supplies individually.

The principal in each school decides whether to purchase the book and use school funds. Currently, sixty-four schools in the County where the teachers are employed have purchased the book using their general funds.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-4(w) states in pertinent part that...the provision of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine.

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public employee may not intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

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:

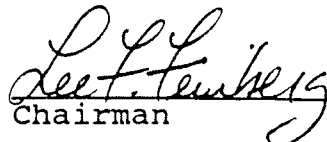
- (A) An interest:
  - (i) not exceeding ten percent of the partnership or the outstanding shares of a corporation; or
  - (ii) not exceeding thirty thousand dollars interest in the profits or benefits of the contract;

#### ADVISORY OPINION

It is the Commission's opinion that, based on the amendments made to the Act by the Legislature during the 1990 Legislative session, it would not be a violation of subsection 6B-2-5(d)(1) for either the County schools or the County Board of Education to purchase a book published by a company owned by three County Board of Education employees. The teachers do not have direct authority or control over the letting of public contracts on behalf of the County and therefore would be exempt from the interest in public contracts prohibition clause.

Also, the teachers should be mindful of subsection 6B-2-5(b)(1) which prohibits a public employee from using his or her office for private gain.

The Commission would refer the requestor to Article 12, Section 9 of the West Virginia Constitution which states...No person connected with the free school system of the State, or with any educational institution of any name or grade under state control, shall be interested in the sale, proceeds or profits of any book or other thing used, or to be used therein, under such penalties as may be prescribed by law: Provided, that nothing herein shall be construed to apply to any work written, or thing invented, by such person.

  
Chairman