

ADVISORY OPINION NO. 93-35

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 2, 1993

GOVERNMENTAL OFFICIAL SEEKING OPINION

Director of a State Division

OPINION SOUGHT

Is it a violation of the Ethics Act for a public employee to take official action on matters relating to a company which conducts businesses with her spouse's employer?

FACTS RELIED UPON BY THE COMMISSION

It is the responsibility of the public employee, as a Buyer, to request bid proposals or price quotes and to award purchase contracts. The public employee's spouse is an attorney employed by a local law firm. One of the firm's clients is a vendor who is bidding on a "request for proposal" being handled by this public employee. The law firm has advised the vendor on various issues related to its proposal in response to the bid request but has not directly contacted the State Division on this particular matter.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no public employee or member of her immediate family or business with which 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 she may have control...

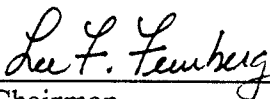
West Virginia Code §6B-2-5(e) states in pertinent part that...No public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

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Pursuant to WV Code §6B-2-5(d)(1), a public employee may not have more than a limited interest in the profits or benefits of a public contract over which she has direct authority or control. Although the individual's position as a Buyer for a State Division does give her authority and control over the awarding of certain public contracts, the mere fact that the Buyer's spouse is employed by a law firm which represents a potential vendor does not give the Buyer a pecuniary interest in a public contract as that term is defined in the Ethics Act. Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for the public employee to handle the bid proposal at issue in this opinion.

The Commission would remind the requestor that WV Code §6B-2-5(b)(1) prohibits public employees from using their public office or the resulting prestige of their office for their own private gain or the personal gain of another. Specifically, the Buyer may not wrongfully use her official position to obtain, increase, influence or promote business for the Vendor which conducts business with her spouse's employer.

Further, the public employee should also be aware of WV Code §6B-2-5(e) which prohibits public officials from using confidential information acquired during the course of performing official duties to further personal interests or the interests of another. Therefore, the Buyer may not use any confidential information acquired as a public employee to assist any private company, through a competitive bid or otherwise, in securing a public contract.


Chairman