

ADVISORY OPINION NO. 89-86

ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

An attorney on behalf of a State Department

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a State supervisor's Department to contract with a non-profit corporation that employs her spouse?

OTHER FACTS RELIED UPON BY THE COMMISSION

A State Department Administrator supervises six divisions within the department. The Administrator's spouse is employed as the Chief Executive Officer of a non-profit corporation. The Administrator's Department contracts with this non-profit corporation.

Although the Administrator has overall administration of the department, another employee has direct day to day management of the division office where the service contracts originate.

If the Commission finds that the appointment is a violation of the Act, then the Department requests an exemption pursuant to West Virginia Code section 6B-2-5(d)(3).

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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 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 has direct authority or with which he or she is employed: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

West Virginia Code 6B-2-5(d)(2) states that in the absence of bribery or a purpose to defraud, an elected or appointed public official or 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, or an interest as a creditor not exceeding ten percent of the total indebtedness of a business or thirty thousand dollars, whichever is the lesser.

ADVISORY OPINION

An analysis of the facts presented and pertinent statutory provisions of West Virginia Code 6B-2-5(d)(1) and (2) follows:

1. The Administrator is a public employee of a State Department.
2. The Administrator's spouse is "employed" by a non-profit organization that contracts with one of the divisions that the Administrator oversees.
3. However, the Administrator's spouse works as an employee and has a limited interest in the business (the non-profit corporation) since he owns less than 10% or \$30,000.
4. Therefore, it would not be a violation of subsection (d)(1) for the spouse's organization to contract with the Administrator's Department.


Chairman