

ADVISORY OPINION NO. 90-29

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Public Service District

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a Public Service District to purchase real estate from a County Commissioner's family member?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Public Service District is a public body appointed by, but independent of the County Commission. The County Commission and the Public Service District are joint applicants in a federal grant which will finance in part, the sighting of a second water well in the County.

The Public Service District had been negotiating with a property owner in the recommended drilling area, but the property owner has now refused to sell. However, the landowners immediately adjacent to that property are willing to sell to the Public Service District, a nearly identical piece of property at the same price that was offered to the first property owner. These landowners are family members (daughter and son-in-law) of a County Commissioner.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that... A public official 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 6B-2-5(d)(1) states in pertinent part that... no elected public official or member of his or her immediate family ...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...

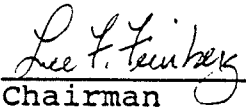
West Virginia Code 6B-1-3(d) defines "immediate family", with respect to an individual, means...any dependent child...

ADVISORY OPINION

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

- a. The County Commission Member is a public official with direct authority over a governmental agency (the County Commission and in part, the Public Service District).
- b. A family member (daughter) has more than a "limited interest" in a public contract with the governmental agency over which the County Commission member has direct authority, since the family member and her spouse are the sole owners of the property.
- c. 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.
- d. However, the family member would not be considered an "immediate" family member pursuant to subsection 6B-1-3(d) of the Act.
- f. For the purpose of this section "immediate family" member is defined to include a dependent child.
- g. Therefore, it is not a violation of subsection (d)(1) of the Act for a Public Service District to purchase property for a well site from a County Commissioner's family member (the Commission assumes the purchase price would be at fair market value) when that family member is not an "immediate" family member as defined by the Act.

However, the County Commissioner should be mindful of subsection 6B-2-5(b)(1) of the Act which provides that an elected public official should not intentionally use his office or the prestige of his office for his own personal gain or for that of another person.


Chairman