

ADVISORY OPINION NO. 90-39

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent of a County Board of Education

OPINION SOUGHT

1. Whether it is a violation of the Act for a County Board of Education employee's spouse to be a candidate for the Board of Education, and if successful, can he/she serve on the Board of Education if the spouse continues to work as a teacher for the County Board of Education?
2. Whether it is a violation of the Act for the County Board of Education member to vote to continue an employment contract and provide fringe benefits for his/her spouse?
3. Whether it is a violation of the Act for a local dentist to be a candidate for the Board of Education when the County Board of Education currently provides dental insurance coverage to all employees by the dentist of their choice?
4. Whether it is a violation of the Act for the dentist if elected to the Board to continue treating employees of the County Board of Education and be reimbursed through the County Board of Education's dental insurance plan?
5. Whether it is a violation of the Act for the dentist if elected to vote to pay bills when submitted on a monthly basis for employee's dental insurance or must the dentist give up all rights to any dental insurance claims filed by Board employees who use him as their primary dentist?

OTHER FACTS RELIED UPON BY THE COMMISSION

The dentist is reimbursed for his services through a dental benefit plan. The County Board of Education is self-insured. They make a decision as to whether claims are payable and to what rate reimbursement is given according to scale. The insurance company bills the Board of Education monthly for costs of dental claims for the employees, their spouses, and their children. The Dentist is a candidate for the County Board of Education and receives compensation through the insurance company for dental work.

While the County Board of Education does not write the requestor a check directly, they do reimburse the insurance company for work performed by the dentist.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that no elected...public official...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...Provided, that nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

West Virginia Code Section 6B-2-5(b)(1) states 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. The performance of usual and customary constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code Section 6B-1-2(c) states that...when such conflict becomes personal to a particular public official...such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsections (d)(1) and (2) follows:

1. It would not be a violation of the Act for a County Board of Education member's spouse to be employed by the County since the first proviso in subsection (d)(1) states that nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body.

2. Subsection 6B-2-1(c) requires a public official to recuse himself from deciding or acting on a matter when such conflict becomes personal. It is the Commission's opinion that the potential Board of Education member should not participate in any specific decisions (contract or fringe benefits) regarding his spouse or her employment.

3. As long as the dentist did not use his public office or prestige as County Board of Education member for his private gain it would not be a violation of subsection (b)(1) of the Act for him to treat County employees.

4. Since the potential Board of Education member is reimbursed through the insurance company and does not directly contract with the County Board of Education it is not a violation of subsection 5(d)(1) of the Act.

5. As the Commission previously noted in Response Number 2, a part-time public official should recuse himself from deciding or acting on a matter that becomes personal to him as set forth in subsection 6B-1-2(c) of the Act. It is the Commission's opinion that voting or deciding on payment of money to himself would be personal and require the Board member's recusal.

Lee F. Fenberg
CHAIRMAN