

ADVISORY OPINION NO. 96-57

Issued on December 5, 1996 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Attorney for a public official

OPINION SOUGHT

May an aunt of the Grantor serve as a trustee for a qualified blind trust?

FACTS RELIED UPON BY THE COMMISSION

An attorney for a public servant who is required to file a financial disclosure statement pursuant to WV Code 6B-2-6 is drafting a proposed qualified blind trust. The proposed trust would have three trustees. One would be a commercial bank trust department and the other two would be individuals who meet the professional requirements for trustees under the Ethics Act.

One of the two proposed individual trustees is the aunt of one of the trust's Grantors. She would meet the professional requirements of the Ethics Act since she is a certified public accountant and an investment advisor. She has served as an investment advisor for the Grantors in the past and received her standard fees for providing that service.

The requestor is concerned to establish whether the aunt may serve as a trustee for this blind trust.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-8(c) provides, in pertinent part

(c) For purposes of this section, the term "qualified blind trust" includes a trust in which a regulated person or immediate family has a beneficial interest in the principal or income, and which meets the following requirements:

(1) The trustee of the trust is a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust)

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(A) Is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party;

(B) Is not or has not been an employee of any interested party or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(C) Is not a relative of any interested party. (emphasis added)

West Virginia Code 6B-1-3(d) states that "immediate family", with respect to an individual, means a spouse residing in the individual's household and any dependent child or children and dependent parent or parents.

ADVISORY OPINION

The Ethics Act provides for the creation of blind trusts designed to avoid conflicts of interest between a public servant's private financial interests and his or her public responsibilities. Those who place their assets in a blind trust managed by trustees insulate themselves from personal involvement with and control over those assets. There are two significant consequences of placing assets in a qualified blind trust.

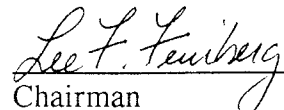
First, certain public servants are required by the Act to file an annual financial disclosure statement which reports, among other things, all sources from which they have received income in excess of \$5,000 annually. Income from assets which have been placed in a qualified blind trust need not be reported on that annual financial statement.

Second, the Act prohibits public servants from having a personal financial interest in a public contract over which they have authority or control. Public contracts which involve private interests held in a qualified blind trust are not subject to this prohibition.

The Act provides that a public servant's "relative" may not serve as trustee of a qualified blind trust. Since the term is not expressly defined, the requester asks if a public servant's aunt is considered a "relative" and thereby precluded from serving as trustee.

The Commission finds that when the Legislature intended a narrow meaning of relative, it used the definition of "immediate family" in several provisions of the Ethics Act including some pertaining to financial disclosure statements. See, WV Code 6B-2-5(d) and (j) and WV Code 6B-2-7(6) and (7).

The Legislature's use of the general term "relative" without qualifier at WV Code 6B-2-8(c) indicates an intention to give that term a broader meaning. The Commission therefore finds that the aunt is a "relative" and is disqualified from serving as a trustee for a qualified blind trust.


Chairman