

ADVISORY OPINION NO. 2006-04

Issued On May 4, 2006 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Employee asks if his spouse's business relationship with a property developer prohibits him from providing administrative support to the County Planning Commission on matters regarding this particular developer.

FACTS RELIED UPON BY THE COMMISSION

The requester is employed full time by a County Commission as a Community Resource Coordinator. His specific job duties are assigned by a 15-member advisory board whose membership is appointed by the County Commission. These duties include providing project management for various projects and initiatives approved under the county's comprehensive plan.

In addition, the requester provides advice and guidance, through the advisory board, to other county officials and agencies, including the Zoning Enforcement Official, Planning Commission and Board of Zoning Appeals. One aspect of his work involves providing administrative support to the Zoning Enforcement Official and Planning Commission to assist in their determination of whether a proposed project satisfies the minimal requirements of the county's unified development code.

The requester's spouse is an attorney who holds a partnership in a county law firm. In the past two years, she has performed various professional services for a developer, including performing a title search and conducting a closing on the purchase of a corporation, thereby acquiring a large tract of real property that is being proposed for development, acting as closing attorney on an unrelated land acquisition, and preparing deeds for the developer.

This same developer currently has a matter before the County Planning Commission. The developer is represented by a law firm from another county. Neither the requester's spouse nor her law firm is affiliated with the law firm which represents the developer.

Ordinarily, the requester is not aware of the clients represented by his spouse or her law firm. However, by this point the requester is aware of the professional services provided to this particular client by his spouse as described above. Moreover, his employer is generally on notice of his spouse's business relationship with the developer.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) provides in pertinent part that: A public official or public employee may not knowingly and 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.

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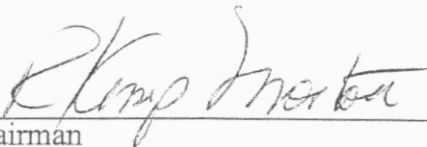
The issue presented by this request is whether the business relationship between a public employee's spouse and a developer establishes a pecuniary interest which precludes the requester from providing services to one of the county agencies supported by his county employer.

The requester does not have decision-making authority on the developer's proposal. He is employed in a support capacity where he provides input to the individuals and agencies which exercise that authority. No provision in the Ethics Act disqualifies him from performing these duties based on his spouse's limited business relationship with this developer.

Nonetheless, the requester remains subject to the general prohibition in W. Va. Code § 6B-2-5(b)(1) against a public employee using his office for his own private gain or the private gain of another. Therefore, the requester is reminded that he may not wrongfully use his position to benefit the business interests of an entity that obtains goods or services from his spouse's law firm.

One of the stated purposes of the Ethics Act is to maintain confidence in the integrity and impartiality of government. To achieve that purpose, the Commission finds that when a public employee is aware that his or her spouse represents a business in a legal proceeding and the business may be appearing before his agency on another matter, then the public employee should bring this fact to the attention of his immediate supervisor or the governing body before whom a matter is pending.¹ In this case both the public and the requester's employer are aware of the relationship. Therefore no further formal disclosure is required.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et. seq.*, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.


Chairman

¹The Commission recognizes that at times a public employee will not be aware that his spouse represents a client due to the attorney client privilege and other limitations contained within the Code of Professional Responsibility for attorneys.