

**ADVISORY OPINION NO. 94-05**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON MARCH 3, 1994**

**GOVERNMENTAL BODY SEEKING OPINION**

The Comptroller for a Community College

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a Community College to contract for services with a private corporation owned by two full-time faculty members of that College?

**FACTS RELIED UPON BY THE COMMISSION**

A Community College recently received a federal grant to fund an Environmental Technology curriculum. This institution would like to contract for services with a private corporation owned by two full-time faculty members of the College. One of the faculty members is an instructor in the College's Chemistry Department and the other is an instructor in the Social Science program.

The purpose of the agreement is for the private corporation to provide the laboratory equipment, instruction and training for students enrolled in the Environmental Technology curriculum at the Community College.

All purchasing decisions for the Community College are made by the Comptroller with input from the Dean of Instruction of the Community College. The requestor has stated that the faculty members of the College do not have any authority or control over this purchasing decision of the College.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

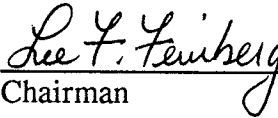
West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no ...public employee...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 which such official or employee may have direct authority to enter into, or over which he or she may have control...

**ADVISORY OPINION**

Pursuant to WV Code §6B-2-5(d)(1), public employees may not have more than a limited interest in the profits or benefits of a public contract over which they have direct authority or control. However, the Comptroller for the Community College has stated that the faculty members who own the private corporation do not have voice, influence or control over the Community College's decision to enter into a contract for services related to the environmental technology curriculum. Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for two faculty members of the Community College, through their private corporation, to enter into a contract with the Community College.

The Commission notes that pursuant to WV Code §6B-2-5(b)(1), a public official may not use his office or the resulting prestige for his own private gain or for the private gain of another. Consequently, officials for the Community College should take care to insure that any contract they enter into on behalf of the College is commercially reasonable. Officials for the College who are responsible for selecting the vendor for this contract could be liable for having used their position for the private gain of another if comparable services could be acquired at a lower cost from another vendor.

  
Chairman