

ADVISORY OPINION NO. 95-11 (Revised)

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 6, 1995

GOVERNMENTAL BODY SEEKING OPINION

Regional Education Service Agency Program Development and Support Services Director and Chapter 2 Director

OPINION SOUGHT

Is it a violation of the Ethics Act for an employee of a Regional Education Service Agency to co-author a grant proposal with her spouse which recommends that her spouse be given monies from the grant for services rendered?

FACTS RELIED UPON BY THE COMMISSION

The requester is employed as a Program Development and Support Services Director and Chapter 2 Director of a Regional Education Service Agency (herein after referred to as RESA). In that position the requester develops programming, implements training initiatives, writes and submits grant applications, and works on other educational projects.

In the course of her employment, the requester and her husband wrote and submitted a grant application. The application requested a \$25,000 grant award to support a weekly radio program to highlight such projects, programs and individuals that are changing the lives of young people in a positive way. The goal of the project is to provide an opportunity for individuals and families to be aware of programs that will assist them in developing habits and principles which will help them resist the temptation to abuse alcohol and other drugs.

The budget for this program includes a line item for a Director/ Host at a consultant fee of \$3,000. The Director/Host is responsible for the development of programs, interviewing weekly guests, serving as program host, assisting in the development of the tapes with the production manager, and delivering those tapes on a weekly basis to the station manager. The requester determined that her spouse was the most appropriate person to serve in this position.

The funding source approved the grant application as submitted. After the grant was awarded, it was presented to the RESA Board of Directors for final approval. The control of the grant award/project lies with the RESA Board of Directors and the Governor's Drug-Free Communities Funding Agency.

The requester is not a voting member of the RESA Board of Directors and in her capacity as the facilitator of the grant award she will not receive any direct monetary award. To date the RESA Board has never rejected a grant proposal from the requester.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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.

ADVISORY OPINION

Pursuant to WV Code §6B-2-5(b)(1), a public employee may not use his office or the resulting prestige for his own personal private gain or for the private gain of another.

The requester is employed as a Program Development and Support Services Director and Chapter 2 Director of RESA. One of the requester's job responsibilities is to write and submit grant proposals. In this instance, however, the requester has written and submitted a grant proposal which names her spouse as the Director/Host of the program. The spouse of the requester will gain financially if RESA approves the grant since the Director/Host will receive consultant fees of \$3,000.

In Advisory Opinion #94-29, the Commission determined that it would be an improper use of public office for a public servant to initiate a contract which would result in financial gain to that official. The decision was based on the fact that the public servants instigated the proposal and were in a unique position to persuade or influence their employer to participate in the proposed project.

The same principles apply in this case. The Requester, as co-author of the grant proposal which recommends her spouse be hired as the Director/Host of the program, has initiated a contract which would result in private gain to her spouse. Further, it is clear from the facts presented that even though the requester is not a voting member of the RESA Board of Directors, the Board relies heavily on her judgment when considering grant proposals.

Therefore it would be a violation of WV Code §6B-2-5(b)(1) for the requester to write and submit a grant proposal or initiate a public contract which results in private gain to her spouse.


Chairman