

ADVISORY OPINION NO. 91-08

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A Public Employee of a State Department

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a public employee to participate in the evaluation of proposals submitted by vendors when one of the participating vendors employs two close personal acquaintances?

FACTS RELIED UPON BY THE COMMISSION

The public employee is an Information Systems Consultant for a State Department. He is currently working in conjunction with a State Department regarding a Request For Proposal (here after referred to as RFP) for an optical disk document storage system. As part of the RFP process, vendors who plan to submit proposals in response to the RFP can submit written questions about the procurement process and requirements. Part of the public employee's job responsibilities is to assist the State Agency in responding to these questions.

In addition to responding to vendor questions, the public employee will assist the State Department in evaluating the proposals they receive in response to the RFP. This evaluation committee awards points to each vendor based on the criteria outlined in the RFP. The vendor with the RFP awarded the highest point level is then recommended to the Purchasing Division for final review. The Purchasing Division makes the final decision in regard to which optical disk document storage system to purchase.

The public employee has had a personal acquaintanceship with two managers of one competing vendor for fifteen years. The requestor stated that there does not appear to be any State guidelines which address this situation.

The public employee has met with his Supervisor and the Support Services Manager to inform them of the potential conflict as a result of his relationship with these individuals. They have expressed complete confidence in his integrity and ability to participate in the RFP evaluation in an objective and unbiased manner. Furthermore, they feel that it would be difficult to replace him at this stage because of the background that he has acquired. The optical disk document storage is the employee's permanent work assignment.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

ADVISORY OPINION

Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act, a public employee may not knowingly use his office or prestige for his own private gain or the private gain of another.

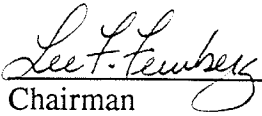
It is part of the public employee's job responsibilities to evaluate proposals for an optical disk document storage system submitted to his agency by competing vendors. The public employee has had a personal acquaintanceship with two managers of one of the participating vendors for fifteen years.

First, the Commission finds that the public employee is not knowingly or intentionally using his office for the private gain of another person. He has made a public disclosure of his personal relationship with two managers of the participating vendor. The requestor has offered to remove himself from the process of evaluating proposals for the optical disk document storage system and has attempted to find applicable guidelines relevant to his dilemma.

Second, the Ethics Act provides that a public employee should seek to be excused from deciding or acting on a matter that has become "personal to him". The Commission considers a matter to be "personal" when the public employee has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote or would give the appearance of impropriety.

Based on the facts presented it is the Commission's opinion that the personal acquaintanceship between the public employee and the management personnel of one of the participating vendors does not give rise to the appearance of impropriety since, the public employee would be part of an evaluation team and would not be responsible for the awarding of the public contract, and because the public employee has fully and publicly revealed his personal relationship to his supervisor and others involved in the evaluation process. Therefore, it is the Commission's opinion that the employee may participate in the evaluation process.

The public employee should be mindful of subsection 6B-2-5(e) which provides that a public employee may not knowingly and improperly disclose any confidential information acquired by him in the course of his official duties nor use such information to further the interests of another person.


Chairman