

**ADVISORY OPINION NO. 91-23**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON APRIL 4, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

Director of a State Department

**OPINION SOUGHT**

Whether it is a violation of the Ethics Act for the spouse of a State Department Director to be employed by a Company which contracts with the State Department?

**FACTS RELIED UPON BY THE COMMISSION**

In March 1990 the responsibility for tax mapping was taken from a particular State Department and given to County assessors. In order to assist in the transition of tasks, the State Department contracted with a Company to draft real estate property changes on maps for the County assessors. This Company was selected as a result of being the low bidder in a competitive bid process.

It is the State Department Director's responsibility to insure that the work product of the Company meets the contract specifications. County assessors may select this Company to perform map drafting services at the contracted price of \$2.95 per parcel. Several Counties have elected to use this contractor.

In order to perform the drafting work, the Company uses both full-time employees and, if needed, intermittent temporary employees. The Company has used the State Department ~~Director's~~ spouse for various drafting projects.

**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...

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no public official...or member of his or her immediate family 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...

West Virginia Code Section 6B-2-5(e) states in pertinent part that...no present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

### ADVISORY OPINION

#### **Public Contract**

Pursuant to subsection 6B-2-5(d)(1) of the Ethics Act a public employee, a member of his immediate family or a business with which he is associated may not have more than a limited interest in the profits or benefits of a public contract over which such official may have direct authority or control.

For the purpose of this section "limited interest" is defined as an interest not exceeding ten percent of the Company or thirty thousand dollars interest in the profits or benefits of the contract. As an occasional employee of the Company with no ownership interest, the State Department Director's spouse would have a limited interest in the Company.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for a State Department Director's spouse to be employed by a Company which contracts with the State Department.

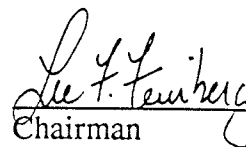
#### **Private Gain**

However, the Director should be mindful of subsection 6B-2-5(b)(1) of the Ethics Act which prohibits a public official or employee from knowingly and intentionally using his office or prestige for his own private gain or for the private gain of another.

Simply, the Director may not use his public position to increase, influence or obtain an employment contract for his spouse with the Company contracting with his State Department or to encourage a public contract between the Company which employs his spouse and other public agencies.

#### **Confidential Information**

Further, the State Director should be mindful not to disclose any confidential information acquired by him during the course of his official duties to further the interests of his spouse or her employer.

  
Chairman