

ADVISORY OPINION NO. 90-16

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Attorney for a public employee's spouse

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County Board of Education to contract with a business owned in part by the spouse of a public employee who works at a Career Center?

OTHER FACTS RELIED UPON BY THE COMMISSION

A photography studio was established early this century and was incorporated in 1959. Since its inception the photography studio has contracted with County schools. In 1967 the company added a partner and the Studio continued taking yearbook, senior, prom, class and various other pictures for County schools.

In December of 1981 a partner of the photography studio married an individual who is now an employee of a Career Center. The partner's spouse is employed as a secretary at the technical school and has tenure in the County (based on her earlier employment in the County). However, the Career Center where she works is a separate entity from the County Board of Education.

The Career Center is a multi-county vocational center operated by a Board of Directors. The Board of Directors is comprised of Superintendents of schools and Board Members from three Counties. The legislative and policy making authority of the Center is vested in its Board of Directors. Executive authority is vested in its Director who is employed by the Board of Directors. The Board of Directors may employ, transfer and dismiss its employees at any time.

The Career Center operates a separate budget from the County Board of Education. The Center's budget is approved by the West Virginia Department of Education. One County Board of Education is required to be the fiscal agent for the Career Center since the Center is located in that County.

Employees of the Career Center maintain their employment rights with the Career Center. If a Career Center employee was employed by a County Board of Education immediately prior to his or her Career Center employment, that employee may transfer back to that County Board of Education if a reduction in force (RIF) is

implemented by the Career Center.

The Career Center employee has no voice nor control over the selection of photographers for the County schools and the facility at which the employee works does not contract with the employee's spouse in any way nor, participate in the taking of traditional school pictures.

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

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no public employee 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 with the governmental body...with which he or she is employed...

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... a public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser...

West Virginia Code 6B-2-5(d)(3) states in pertinent part that... where the provisions of subdivision (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

#### ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsection 5(d)(1) and (d)(2) follows:

1. The secretary is a public employee, since she is employed by a Career Center, with funds budgeted by the West Virginia Department of Education.
2. The public employee's immediate family member is associated with a business that has a public contract with a governmental agency (County School Board of Education).
3. For the purpose of this section "immediate family" is defined to include a spouse residing in the individual's household.

4. The immediate family member has more than a limited interest in the public contract, since he is a partner with more than 10% ownership interest in the photography studio.

5. However, although the secretary is a public employee, she is not employed by the governmental agency with which her spouse has a public contract.

6. Therefore, it is not a violation of subsection (d)(1) of the Act for the County Board of Education to contract with a business owned in part by the public employee's spouse for photography services.

  
Chairman