

ADVISORY OPINION NO. 90-49

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

Candidate for public office

OPINION SOUGHT

Whether it is a violation of the Act for a County Board of Education member's spouse to be President of the County School Service Personnel Employees Association?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is a candidate for a position on a County School Board of Education. His wife is President of the County School Service Personnel Employees.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected...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 with the governmental body over which he or she has direct authority...

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that a public official...may not 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. The performance of usual and customary constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code Section 6B-1-2(c) states that the Legislature finds that when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

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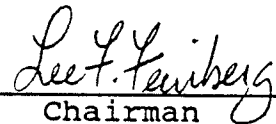
If elected, the County Board of Education Member would be a public official with direct authority over a governmental agency, the County Board of Education. However, it would not be a violation of subsection (d)(1) of the Act since the public official's spouse does not have a public contract with the County Board of Education.

However, the requestor, if elected as a County Board of Education member should be mindful that nothing in this opinion shall be construed to state that other provisions in the Act such as subsections 5(b) or (e) are not applicable, should violations become evident to this commission.

Therefore, if elected the County Board of Education member should not reveal any confidential information acquired by him as a result of his position to further his or a member of his family's interests. (See, 6B-2-5(e))

Also, subsection (b)(1) requires the County Board of Education member not to intentionally use the prestige of his office for his own private gain or for that of another person.

Furthermore, the County Board of Education member should be aware of subsection 6B-2-1(c) which provides that all public officials and employees should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a particular matter when such matter becomes personal to them.

  
Chairman