

ADVISORY OPINION NO. 90-108

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

Secretary for a County Board of Education

OPINION SOUGHT

Whether it is a violation of subsection 6B-2-5(d)(3) of the Act for a County Board of Education to contract for printing services with a company owned by the spouse of a County Board of Education employee?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Printing Company offers the only printing services in the County. It is owned by a County Board of Education employee's spouse. The public employee is the Personnel Coordinator of the County School system. Her sole responsibilities as Coordinator deal directly with the recruitment of perspective employees, verification of teachers' certification and to procedurally communicate with the State Department regarding any prospective employee. She has no authority to render any recommendations for the hiring of any applicant. From a review of the employee's job description it does not appear that she has or may have direct authority or control over the letting of County contracts.

As a result of the Ethics Act the County Board of Education has refrained from conducting business with this Printing Company. Therefore, the County Board of Education is forced to contract for printing services from companies in the surrounding counties and in Ohio. This creates an undue hardship and substantial interference. Due to the lower overhead of this company which is operated from the individual's home, the prices for the printing of materials is substantially lower than other companies.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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 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(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 subsection is:

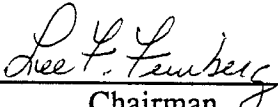
- (A) An interest:
 - (i) not exceeding ten percent of the partnership or the outstanding shares of a corporation;
or
 - (ii) not exceeding thirty thousand dollars interest in the profits or benefits of the contract;

ADVISORY OPINION

Pursuant to subsection 6B-2-5(d)(1) of the Act, a public employee or a member of her immediate family may not have an interest in the benefits or profits of a public contract when such employee may have direct authority or control over the letting of that contract.

The Commission finds that the public employee, as Personnel Coordinator of the County School System does not have direct authority or control over the letting of public contracts for the printing of materials for the County Board of Education.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Act for a County Board of Education to contract for printing services from a company owned by a County Board of Education employee's spouse, since the public employee has no direct authority or control over the letting of public contracts.


Chairman