

ADVISORY OPINION NO. 90-142
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON AUGUST 2, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Board of Education Member

OPINION SOUGHT

- a. Whether it is a violation of the Act for a County Board of Education to purchase books from a publishing company which employs the Board member's brother-in-law?
- b. Whether it is a violation of the Act for a County Board of Education member in his private law practice to represent employees of the County Board of Education in domestic relations cases?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor became a member of a County Board of Education in July of this year. He is also a lawyer with a general practice of law.

The County Board of Education member's brother-in-law is a salesman for a publishing company which sells textbooks to area schools. The County Board of Education would be required to vote on whether the County would purchase textbooks for the school system from this publishing company.

As an attorney with a general private practice, the County Board of Education member may be asked to represent County Board of Education employees in domestic relations cases and other legal matters which are not directly related to their employment with the County Board of Education.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected...public official...or a member of his...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...may have direct authority to enter into, or over which he...may have control...

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an elected...public official...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

Public Contract

a. The Commission finds that the County Board of Education member has direct authority and control over the letting of public contracts by the County Board of Education.

The County Board of Education member's brother-in-law is associated with a business which may have an interest in the public contract.

The Ethics Act prohibits an immediate family member of a public official who has direct authority over the letting of contracts from being a party to a public contract with the official's governmental agency.

However, the Commission would note that a brother-in-law is not an immediate family member as defined by the Act. For the purpose of this section "immediate family member" is defined as a spouse residing in the household, dependent children or dependent parents.

Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(d)(1) of the Act for the County Board of Education to contract with a publishing company which employs the County Board of Education member's brother-in-law.

Voting

However, the Commission would remind the County Board of Education member of subsection 6B-1-2(c) which states that certain conflicts of interest are inherent in part-time service and these conflicts do not necessarily disqualify a public official from voting or deciding a matter. However, when such conflict becomes **personal** the public official should seek to recuse himself from voting on a matter.

The Commission considers a matter to be "personal" when the public official 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. The Commission finds that although the County Board of Education member does not have any pecuniary interest in the contract he is affected in a manner which may influence his vote or would give the appearance of impropriety by way of his brother-in-law being **employed** by the publishing company which may sell books to the County Board of Education.

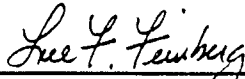
Also, the Commission would note that subsection 6B-2-5(b)(1) of the Act prohibits a public official from **knowingly** and **intentionally** using his office or the prestige of his office for his own private gain or the private gain of another.

b. The next issue to be addressed by the Commission is whether it is a violation of the Act for a County Board of Education member, in his private law practice to represent County Board of Education employees in domestic relations cases or other matter not relating to their employment with the County Board of Education.

As stated above subsection 6B-2-5(b)(1) of the Act prohibits a public official from **knowingly** and **intentionally** using his office or the prestige of his office for his own private gain or the private gain of another.

Subsection 6B-1-2(c) speaks to a part-time public official's responsibilities and when recusal from voting on or deciding a matter is required. That provision requires recusal when a matter becomes "personal" to that individual. The Commission would remind the County Board of Education member that although the member does not have any pecuniary interest because of his representation of County Board of Education employees in other legal matters, he would be affected in a manner uncommon to the other Board members because of his attorney-client relationship with such employees.

When an employment issue such as school assignments, promotions, layoffs, terminations or other administrative matters concerning one of the Board member's clients comes before the Board, he should seek to be recused from voting or deciding that matter.



Chairman