

ADVISORY OPINION NO. 89-17

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

An employee of the city owned hospital

OPINION SOUGHT

Should the only commercial print shop in town receive an exemption from the Ethics Commission in order to serve the city owned hospital and other businesses because the proprietor's wife is an employee of the hospital and the loss of sales could be devastating to the print shop?

OTHER FACTS RELIED UPON BY THE COMMISSION

The print shop served the city owned hospital until the city ceased to do business with them in respect for the new Ethics Act. The reason was that the proprietor's wife was a lab technician at the hospital. She has since resigned so that the print shop won't suffer financial loss. Her job duties did not include ordering printed material for the hospital. She will have to seek employment elsewhere unless an exemption is granted.

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 with the governmental body over which he or she...is employed.

West Virginia Code Section 6B-2-5(d)(3) states in pertinent part that where the provisions of subdivision (1)...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 subdivision (1)...of this subsection.

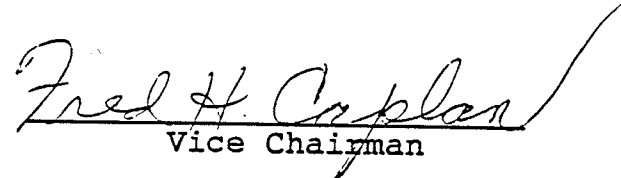
West Virginia Code Section 6B-1-3(d) defines immediate family with respect to an individual to mean a spouse residing in the individual's household and any dependent child or children and dependent parent or parents.

ADVISORY OPINION

West Virginia Code Section 6B-2-5(d)(1) is applicable since the laboratory technician is a public employee, and a member of her immediate family will have an interest in the profits or benefits of a contract with the governmental body with which she is employed.

The provision allowing exemption requires the affected governmental body or agency to make written application for any of the reasons set out in subsection (3) of West Virginia Code 6B-2-5(d).

THEREFORE, the Commission is without authority to grant an exemption except that it be in writing and submitted by the affected governmental body or agency setting forth a basis as required under West Virginia Code 6B-2-5(d)(3) such as: excessive cost, undue hardship, or substantial interference with the affected governmental body.


Vice Chairman