

ADVISORY OPINION NO.89-37

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

A Director of Special Education for a county school system

OPINION SOUGHT

Whether it is a violation of the Act to contract with the local chapter of the American Red Cross for training of all special education personnel when the County Director of Special Education is the chairman of the local American Red Cross Board of Directors?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Director of Special Education in the county school system is the Chairman of the local Red Cross Board of Directors. He does not receive a salary, expenses, or any other remuneration for his work with the local Red Cross.

All special education personnel (professional and service) employed after July 1, 1989 are required to receive first aid training. The Red Cross training class will cost the county \$15.00 per person.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b) states that a public official or public employee 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 6B-2-5(d)(1) states in part that no public employee...or business with which he 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 or with which he or she is employed.

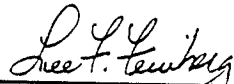
West Virginia Code 6B-2-5(d)(2) states in part that an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is

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 of the public contract involved. A limited interest 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, or an interest as a creditor not exceeding ten percent or thirty thousand dollars, whichever is the lesser.

ADVISORY OPINION

It is the Commission's opinion that it would not be a violation of West Virginia Code subsection (d)(1) for a public employee to contract with the local Red Cross Chapter (of which he is Chairman of the Board of Directors) to provide first aid training for county school employees, since the public employee has a limited interest in the Red Cross, under West Virginia Code subsection 6B-2-5(d)(2).

Further, it is the Commission's opinion that although the Red Cross will financially benefit from providing the training, the public employee is not "intentionally" using his office for his or the Red Cross' private gain so as to constitute a violation of West Virginia Code 6B-2-5(b).



Chairman