

ADVISORY OPINION NO. 89-107

ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

Superintendent of a County School System

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County school system to refer injured student athletes to a doctor whose spouse is an elected member of the County Board of Education?

OTHER FACTS RELIED UPON BY THE COMMISSION

The only orthopedic surgeon in the County is the spouse of a School Board Member. The Board of Education refers injured athletes to this orthopedic surgeon for treatment. The County Board of Education pays for the insurance coverage for athletes. The insurance company pays for student athletes' medical treatment and services. The doctor does not receive direct monetary gain from the County School Board.

If it is determined by the Commission to be a violation the County School Board has made a written request for an exemption on the basis that this doctor is the only orthopedic surgeon capable of providing treatment in the area.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

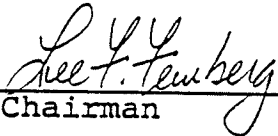
West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected official or member of his or her immediate family... may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority...

West Virginia Code 6B-2-5(b)(1) states in pertinent part 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.

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provision of West Virginia Code 6B-2-5(d)(1) follows:

1. The Board of Education Member is an elected public official.
2. The member's immediate family (spouse) does not have an interest in a public contract with a governmental body, but contracts with and receives monetary gain from a private insurance company.
3. Therefore, it would not be a violation of subsection (d)(1) of the Act for a County School Board member's spouse to receive payment from a private insurance carrier for treatment of County students.
4. Furthermore, the Commission would remind the School Board member that subsection (b)(1) of the Act prohibits a public official from using his or her office or prestige for private gain.



Chairman