

ADVISORY OPINION NO. 89-127

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent of a County School Board

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a County School Board to purchase items from a company which "employs" the spouse of a School Board employee?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County School Board employee is a teacher. The employee has no contact, nor control over purchases made by the School Board.

The teacher's spouse is employed by the only sporting goods company in the County and receives a fixed salary with no added bonuses or profit incentives for sales.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 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 6B-2-5(d)(2) states in pertinent part that... a public employee or a member of his or her immediate family or business with which he 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 section 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.

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsections (d)(1) and (2) follows:

1. The teacher is a public employee, since she is employed by the County School Board.
2. For the purpose of this section, "immediate family" is defined as a spouse residing in the individual's household.
3. The public employee's immediate family member does not have more than a limited interest in the Company because he is a salaried "employee" and does not hold any ownership interest.
4. For the purpose of this section, limited interest is defined as ten percent of the outstanding shares of stock issued by the company or thirty thousand dollars, whichever is the lesser.
5. Therefore, it is not a violation of the Act for the County School Board to contract with a company which "employs" an immediate family member of a School Board employee who has no ownership interest.

  
Chairman