

**ADVISORY OPINION NO. 96-49**

Issued on October 3, 1996 by the

**WEST VIRGINIA ETHICS COMMISSION**

**PUBLIC SERVANT SEEKING OPINION**

County School Superintendent

**OPINION SOUGHT**

Is it a violation of the Ethics Act or WV Code 61-10-15 for a school system to purchase additional textbooks from a company which employs the Superintendent's spouse?

**FACTS RELIED UPON BY THE COMMISSION**

In 1993 the County School Board adopted a series of textbooks for use in its kindergarten classes from 1993 to 1999. The selection process involved a committee of teachers who reviewed state-approved texts and, with input from other teachers and parents, selected a kindergarten textbook series that was then approved by the Board. This process is governed by state law and the State Board determines the length of time a series will be used. The Superintendent had no active role in the selection.

The Board entered into a contract with a publishing company to purchase the necessary textbooks. The contract is open-ended as to the number of books that will be purchased while the agreement is in effect. However, the price for a textbook remains the same during the life of the contract.

In 1993 the Superintendent's spouse was employed by a competitor of the company that publishes the selected kindergarten textbook. However, the spouse is now employed by the publisher of that textbook.

An increase in the number of the County's kindergarten age students now requires the school system to purchase additional textbooks. The requester is concerned to establish whether additional purchases under the open-ended 1993 agreement would violate the Ethics Act or WV Code 61-10-15.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or 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 which such official or employee may have direct authority to enter into, or over which he or she may have control...

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...district school officer...supervisor or superintendent, principal or teacher of public schools, or any member of any other county or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

### ADVISORY OPINION

#### **The Ethics Act**

The Ethics Act, at WV Code 6B-2-5(d), prohibits public servants from being a party to, or having a financial interest in, a public contract which they may have authority to enter into or over which they may have control.

However, this prohibition does not ban limited interests in a contract. The Commission has held that the interest of a salaried employee in any contract of his or her employer is a limited interest as that term is used in the Ethics Act. Since the Superintendent's spouse is a salaried employee of the book company chosen in 1993 to supply kindergarten textbooks, the spouse would have only a limited interest in any supplemental purchases of the textbook.

Therefore it would not violate WV Code 6B-2-5(d)(1) if the School Board purchased additional kindergarten textbooks from the company selected in 1993 even though the Superintendent's spouse is now a salaried employee of that company.

#### **West Virginia Code 61-10-15**

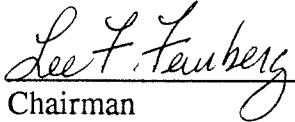
West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any public contract if he has voice, influence or control over such contract. However, in this instance the decision to purchase kindergarten textbooks from a particular publisher was made prior to the employment of the Superintendent's spouse with that company.

This case is virtually identical to prior instances where the contract was executed **before** the existence of a potentially disqualifying situation. In Advisory Opinion No. 96-41 the Commission approved payment for merchandise ordered from a company before the Treasurer/Business manager's spouse was employed by that vendor. In this case the order for the books was placed in 1993, prior to the Superintendent's spouse becoming an employee of that publisher. The Commission applies its earlier precedent to the facts of this case as well.

Therefore, it would not be a violation of WV Code 61-10-15 for the School Board to purchase supplemental kindergarten texts from the publisher selected to supply those texts in 1993 for a period including 1993 through 1999.

This opinion does not allow the selection of this publishing company if future textbook selections require new contracts, outside of the 1993 contract, and the Superintendent's spouse is still employed by that company. It is also based on the reliance that this is a pre-existing contract and that the spouse is a salaried employee whose level of compensation will be unaffected by the purchase of additional textbooks under the 1993 contract.

The requester is cautioned that this opinion is limited to a consideration of the Ethics Act and WV Code 61-10-15. This Commission is without the authority to determine whether the proposed purchase would violate the provisions of WV Const. Art. 12, §9 which provides, in part, that "[n]o person connected with the free school system of the State...shall be interested in the sale, proceeds or profits of any book or other thing used, or to be used therein, under such penalties as may be prescribed by law..."

  
Chairman