

ADVISORY OPINION NO. 90-174

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

The Superintendent of a County School System

OPINION SOUGHT

Whether it is a violation of the Ethics Act for the County Board of Education to employ a Board member's spouse as an assistant principal?

OTHER FACTS RELIED UPON BY THE COMMISSION

A vacancy exists for an assistant principal. The vacancy was properly advertised and applications solicited following a standard procedure for all County jobs. Approximately nine applicants were interviewed and their credentials checked by an evaluating team. On the team's recommendation the County Superintendent nominated the top applicant for the position to the County Board of Education. This applicant is the spouse of a Board member. The Board member would abstain from voting on this matter.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-1-2(c) states that...certain conflicts of interest are inherent in part-time public service...when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

West Virginia Code Section 6B-2-5(b)(1) states that a public official...may not knowingly and 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.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected public 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 which such official... may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

ADVISORY OPINION

Nepotism

Subsection 6B-2-5(b)(1) of the Ethics Act states that a public official may not knowingly and intentionally use his or her office for his or her own private gain or that of another person. A prohibition against nepotism is included within this subsection. Nepotism has been defined by the Commission as favoritism shown or patronage granted by persons in high office to relatives or close friends in employment matters without giving public notice and consideration to other applicants or qualifications required to perform the job.

The Commission has established certain guidelines to follow in order to aid a public official in avoiding the appearance of nepotism when he or she is considering hiring a relative for a public position:

- a. Provide an adequate and meaningful public notice to all possible applicants.
- b. Remove himself from the decision making process and substitute independent, impartial decision-makers.
- c. Insure that the relative or close friend possesses the qualifications necessary for the position.

Since it appears from the facts presented that the County Board of Education has followed the steps outlined above it would not be in violation of subsection 6B-2-5(b)(1) of the Ethics Act to hire a Board member's spouse.

Voting

However, the Board Member whose spouse is being considered should be mindful not to participate in any discussion or decision making process when the matter is "personal" as outlined below.

Subsection 6B-1-2(c) of the Ethics Act provides that in part-time public service certain conflicts of interest are inherent and when such conflict becomes personal to a particular public official, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

A public official is not permitted to vote on or decide a matter that has become "personal" to that individual. The Commission considers a matter to be "personal" when the public official has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote or would give the appearance of impropriety.

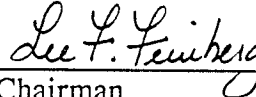
When a matter comes before the County Board of Education that is "personal" to one of the members, that member must recuse himself. For a public official's recusal to be effective, it is necessary for the official to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period, fully disclosing his interest and recusing himself from voting on the issue.

Public Contract

Pursuant to subsection 6B-2-5(d)(1) of the Ethics Act, no public 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 (such as an employment contract) which such official may have direct authority to enter into, or over which he or she may have control. **Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body.**

For the purpose of this section an "immediate family member" is defined as a spouse residing in the same household, dependent children or dependent parents. However, this subsection specifically provides that nothing contained within the Act shall prohibit the employment of any person with any governmental agency.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Ethics Act for the County Board of Education to employ a Board member's spouse as an assistant principal since this subsection specifically provides that nothing contained within the Act shall prohibit the employment of any person with any governmental body.


Chairman