

## **Advisory Opinion 2023-04**

**Issued on March 2, 2023, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

A **County Commission** asks whether a County Commissioner's spouse may be employed by the County Ambulance Service as a licensed emergency medical technician or paramedic.

### **Facts Relied Upon by the Commission**

The County Ambulance Service ("Ambulance Service") is a County agency. The County Commission serves as the Ambulance Service Board, funds the Ambulance Service, and is responsible for hiring its employees. The Requester states that the Ambulance Service is having difficulty filling part-time and full-time emergency medical technician ("EMT") and paramedic positions and that there is an urgent need to fill these positions.

A County Commissioner's spouse is a licensed EMT and paramedic and is willing to apply for and fill one of the vacant positions if it is legal. West Virginia's certification and licensure requirements for EMTs are generally as follows. An individual must successfully complete a 150-hour EMT course, create a continuum account on the West Virginia Office of Emergency Medical Services ("WVOEMS") website, submit an application to the WVOEMS, pass a background check, submit a copy of a valid CPR<sup>1</sup> card, pass the National Registry of Emergency Medical Technicians exam or the state exam, and comply with any other requirement established by the West Virginia Department of Health and Human Resources, Bureau for Public Health. W. Va Code §§ 16-4C-6 and 16-4C-8 and W. Va. Code R. § 64-48-6 (2022).

West Virginia's certification and licensure requirements for paramedics are generally as follows. An individual must successfully complete a paramedic program, have a current EMT license, create a continuum account on the WVOEMS website, submit an application to WVOEMS, pass a background check, submit a copy of a valid CPR card, successfully pass the National Registry of Emergency Medical Technicians exam for paramedics, and comply with any other requirement established by the West Virginia Department of Health and Human Resources, Bureau for Public Health. W. Va Code §§ 16-4C-6 and 16-4C-8 and W. Va. Code R. § 64-48-6 (2022).

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<sup>1</sup> Cardiopulmonary resuscitation

## **Provisions Relied Upon by the Commission**

W. Va. Code § 6B-1-3 states, in relevant part:

(m) “Relative” means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

W. Va. Code § 6B-2-5(b) states, in relevant part:

(1) A public official or public employee 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. . . .

(4) A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: *Provided*, That as used in this subdivision, “employment or working conditions” shall only apply to government employment: *Provided, however*, That government employment includes only those governmental entities specified in subsection (a) of this section.

W. Va. Code § 6B-2-5(d) states, in relevant part:

(1) In addition to the provisions of § 61-10-15 of this code, 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 the official or employee 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. . . .

W. Va. Code § 6B-2-5(j) states, in relevant part:

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class. . . .

(2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses;  
. . . .

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

W. Va. Code § 61-10-15 states, in relevant part:

(a) It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: *Provided*, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse. . . .

(k) The provisions of subsection (a) of this section do not prevent or make unlawful the employment of the spouse of any member of a county commission as a licensed health care provider at government-owned hospitals or other government agencies who provide health care services: *Provided*, That the member of a county commission whose spouse is employed or to be employed may not:

(1) Serve on the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed;

(2) Vote on the appointment of members to the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed; or

(3) Seek to influence the hiring or promotion of his or her spouse by the government-owned hospital or other government agency who provides health care services.

W. Va. Code R. § 158-6-3 (2022) states, in relevant part:

3.1. As used in this section, the term “nepotism” means favoritism shown or patronage granted in employment or working conditions by a public official or public employee to a relative or person with whom the public official or public employee resides.

3.2. As used in this section, the term “relative” means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

3.3. As used in this section, the term “supervise” or “supervision” means reviewing, auditing or evaluating work, or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline, or related matters.

3.4. Nepotism constitutes improper use of office for private gain.

3.5. A public official or employee may not influence or attempt to influence the employment or working conditions of his or her relative or a person with whom he or she resides.

3.6. A public agency, including its officials and employees, must administer the employment and working conditions of a relative of a public employee or a public official or a person with whom the public official or employee resides in an impartial manner.

3.6.1. A public official or public employee may not participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides unless required by law and an independent third party is involved in the process.

3.6.2. A public official or public employee may not directly supervise a relative or a person with whom he or she resides. This prohibition does not extend to matters affecting a class of five or more similarly situated employees.

3.6.3. A public official or public employee may not use a subordinate as an independent third party required by subdivision 3.6.1 of this section. This prohibition does not apply to an elected public official who may not lawfully

delegate powers of his or her office (for example, a sheriff, county assessor, or county clerk).

3.7. A public official may not vote on matters affecting the employment or working conditions of a relative or person with whom the public official resides unless such relative or person is a member of a class of five or more similarly situated persons affected. For a public official's recusal to be effective, he or she must excuse himself or herself from participating in the discussion and decision-making process by physically removing himself or herself from the room during the period in which the matter is under consideration, fully disclosing his or her interests, and recusing himself or herself from voting on the issue.

3.8. Certain county public officials and local board of education officials and employees are subject to the stricter limitations in W. Va. Code § 61-10-15. Other provisions in the Code or a public agency's own policies, rules, regulations, ordinances, or charters may further limit or prohibit the hiring of a relative or a person with whom a public official or employee resides.

### **Advisory Opinion**

W. Va. Code § 61-10-15 is a criminal misdemeanor statute that prohibits county commissioners, and other designated county officials and employees, from being a party to or having a financial interest in a contract over which their public positions give them voice, influence, or control. W. Va. Code § 61-10-15 also prohibits county commissioners' spouses from being employed by the county or other entities over which the county commission exercises voice, influence, or control, unless authorized by one of several exceptions in that Code section.<sup>2</sup> For example, pursuant to this restriction, the spouse of a county commissioner may not be employed by the county sheriff's department or a public service district in the county. [Advisory Opinion 1995-24](#) and [Advisory Opinion 1996-23](#).

W. Va. Code § 61-10-15 contains an exception allowing the employment of a county commissioner's spouse as a licensed health care provider at a government agency that provides health care services. W. Va. Code § 61-10-15(k). The Commission must determine whether an EMT or paramedic is a licensed health care provider for purposes of the exception. A definition of license is "permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful."<sup>3</sup> The state of West Virginia requires the licensure of EMTs and paramedics. A state agency, the West Virginia Office of Emergency Services, is responsible for licensing EMTs and paramedics, and the licenses authorize EMTs and paramedics to engage in those

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<sup>2</sup> These same restrictions apply to other county officials and those officials and employees listed in W. Va. Code § 61-10-15.

<sup>3</sup>Merriam-Webster.com Dictionary, s.v. "license," accessed February 21, 2023, <https://www.merriam-webster.com/dictionary/license>.

occupations and render health care within the scope of their licenses.<sup>4</sup> The Commission finds, therefore, that an EMT or paramedic is a licensed health care provider and that an ambulance authority is a government agency that provides health care services for purposes of W. Va. Code § 61-10-15.

**The Ethics Commission holds that pursuant to W. Va. Code § 61-10-15(k) and the Ethics Act a county commissioner's spouse may be employed as a licensed EMT or paramedic by a county ambulance authority.<sup>5</sup>**

A county commissioner may not be involved in matters uniquely affecting the employment or supervision of his or her spouse as an EMT or paramedic and must recuse himself or herself from participating in the deliberations or votes on matters affecting the spouse's employment, supervision, or working conditions. W. Va. Code § 6B-2-5(j)(1)(A), W. Va. Code R. § 158-6-3 (2022), and [Advisory Opinion 2020-13](#)<sup>6</sup>. For recusal to be proper, a public official must fully disclose on the record his or her disqualifying interest, and then he or she must leave the room during the discussion, deliberation, and vote on the matter. In addition, the minutes or record of the meeting must reflect the basis for the recusal and that he or she left the room during all consideration, discussion, and vote on the item under consideration. W. Va. Code § 6B-2-5(j)(3).<sup>7</sup>

A county commissioner whose spouse is employed as a licensed health care provider at a county agency must also comply with the requirement in W. Va. Code 61-10-15(k) which states that "the member of a county commission whose spouse is employed or to be employed may not:

- (1) Serve on the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed;
- (2) Vote on the appointment of members to the board for the government-owned hospital or other government agency who provides

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<sup>4</sup> The Code defines "Emergency Medical Services" in relevant part as "responding to the medical needs of an individual to prevent the loss of life or aggravation of illness or injury." W. Va. Code § 16-4C-3(e).

<sup>5</sup> The Ethics Act's public contract restrictions contain an express exemption for employment. W. Va. Code § 6B-2-5(d) states: "That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body . . . ." Thus the Ethics Act does not prohibit the employment of a county commissioner's spouse with a government agency. W. Va. Code § 6B-2-5(d).

<sup>6</sup> This Advisory Opinion was issued prior to the amendments to the Legislative Rule provisions governing nepotism in 2022. Nevertheless, the applicable principles and restrictions are the same.

<sup>7</sup> In accordance with the Ethics Act voting provisions, at W. Va. Code § 6B-2-5(j) and W. Va. Code R. § 158-6-3.7 (2022), a public official may, however, participate in matters affecting a relative as a member of a class. "A class shall consist of not fewer than five similarly situated persons." *Id.*

health care services where his or her spouse is employed or to be employed; or

(3) Seek to influence the hiring or promotion of his or her spouse by the government-owned hospital or other government agency who provides health care services.”

**In conclusion, a county commissioner’s spouse may be employed by a county ambulance service as a licensed EMT or paramedic, but the county commissioner must comply with the nepotism rules, recuse himself or herself on matters affecting his or her spouse’s employment, supervision, and working conditions, and may not serve on the ambulance service board or vote on appointments to that board.**

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester should contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid.*

*This Advisory Opinion is limited to questions arising under the Ethics Act at W.Va. Code §§ 6B-1-1 through 6B-3-11, and W. Va. § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B -2-3, this Opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked or the law is changed.*

  
Robert J. Wolfe, Chairperson  
West Virginia Ethics Commission