

Advisory Opinion 2020-13

Issued on September 3, 2020, by

The West Virginia Ethics Commission

Opinion Sought

A **School Principal** asks whether his spouse, sister and brother-in-law may be employed at the same school where he serves as the principal.

Facts Relied Upon by the Commission

The Requester is employed by the Board of Education in a small county which has two schools – an elementary school and a combined middle/high school. The Requester is a principal at the elementary school.

The Requester's spouse, sister, and brother-in-law are also Board of Education employees and work at the same school where he is the principal. His sister and spouse are teachers, and his brother-in-law is an assistant principal.¹

The Requester's sister and brother-in-law were already employed at the school when the Board of Education hired the Requester to be the principal. The Requester's relatives were not involved with this hiring.

In 2019, the Board of Education posted a job opening at the same school for a teacher. The Requester's spouse applied, and the Board of Education hired her. Neither the Requester nor any of his relatives were involved in the decision to hire his spouse.

The Requester does not supervise his relatives. The Board of Education's curriculum director supervises and evaluates the Requester's spouse and sister, while the superintendent supervises and evaluates his brother-in-law.

Recently, the Requester implemented another safeguard by having his relatives submit their time sheets and leave requests to the curriculum director. The Requester states that he has never denied a leave request for any employee at his school in the past, but he has implemented this safeguard to avoid the appearance of impropriety.

¹ The sister/teacher and brother-in-law/assistant principal are married to each other. His sister and brother-in-law do not reside with the Requester and are not financially dependent upon him.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-1-3(m) defines relative as:

[S]pouse, 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 R. § 158-6-3 (2017) states:

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 relatives or persons with whom the public official or public employee resides.

3.2. The Ethics Act prohibits public officials and public employees from knowingly and intentionally using their office or the prestige of their office for their own private gain or the private gain of another person. Nepotism is one form of the use of office for private gain because if public officials or employees use their positions to give an unfair advantage to relatives or persons with whom the public official or employee resides, the primary benefit to such action is to the public official or employee or another person rather than to the public.

3.3. "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.

3.4. 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.

3.5. 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.

3.5.a. To the extent possible, 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. If he or she is one of several people with the authority to make these decisions, others with authority shall make the decisions.

3.5.b. A public official or public employee may not directly supervise a relative or a person with whom he or she resides. This prohibition includes reviewing, auditing or evaluating work or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline or related matters. This prohibition does not extend to matters affecting a class of five or more similarly situated employees.

.....

W. Va. Code § 61-10-15

(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.

Advisory Opinion

The Commission must determine whether W. Va. Code § 61-10-15 or the Ethics Act, at W. Va. Code §§ 6B-2-5(b) and (d), prohibits the Requester from being employed as the principal at the same school where his spouse, sister and brother-in-law are employed.

Spouse

W. Va. Code § 61-10-15

West Virginia Code § 61-10-15(a) prohibits the spouse of a school official, superintendent, or principal from being employed in certain positions in the county school system.² For example, the spouse of a superintendent may not be employed as a central office administrator. *W. Va. Educ. V. Preston Cty. Bd. Of Educ.*, 297 S.E.2d 444 (W. Va. 1982).

The spouse of a school official, superintendent or principal may, however, be employed in the same county school system as a teacher because W. Va. Code § 61-10-15 expressly authorizes it. The relevant proviso states that “nothing in this section prevents or makes unlawful the employment of the spouse of a ...principal...as a teacher....” Id.

The Ethics Commission holds that, pursuant to the plain language of W. Va. Code § 61-10-15(a), a principal’s spouse may be employed in the same school where he or she serves as principal, but that the principal may not be involved in hiring the spouse and must comply with the nepotism restrictions in the Ethics Act and Legislative Rule.

Ethics Act

The Ethics Act does not prohibit the employment of a principal or school official’s spouse in the same school system if the principal or official is not involved in the hiring or supervision of his or her spouse. This conclusion is based upon the plain language in the Act which states that the public contract restrictions do not apply to “the employment of any person with any governmental body.” W. Va. Code § 6B-2-5(d)(1). The Ethics Act does prohibit the Requester and other public officials/employees from showing favoritism in matters affecting the employment or working conditions of their relatives or persons with whom they reside. W. Va. Code § 6B-2-5(b)(1) and (4).

The nepotism restrictions prohibit, with limited exceptions, a public official or employee from supervising their relatives or taking other action which affect their working conditions. W. Va. Code R. § 158-6-3. One exception is that the nepotism rules do not prohibit public officials or employees from being involved in personnel decisions that affect their relatives in the same manner as a class of five or more similarly situated employees. W. Va. Code R. § 158-6-3.5.b.

The Requester states that he was not involved in the decision to hire his spouse. Further, the Board of Education’s curriculum director supervises the Requester’s spouse.

² The restrictions also apply to teachers in the public schools and other county officials. W. Va. Code § 61-10-15.

The Ethics Commission holds that the continued employment of the Requester's spouse at the same school where he serves as principal complies with the nepotism restrictions in the Act and related Legislative Rule, at W. Va. Code § 6B-2-5(b)(4) and W. Va. Code R. § 158-6-3, so long as the curriculum director or other person designated by the superintendent continues to supervise her and the Requester continues to follow the nepotism restrictions in the Legislative Rule.

Sister and Brother-in-law

The Requester's sister and brother-in-law do not reside with him, nor are they financially dependent upon him. Hence, the provisions of W. Va. Code § 61-10-15 do not prohibit their employment at the Requester's school.³

The nepotism restrictions apply to the employment of the Requester's sister and brother-in-law as they fall within the definition of relatives set forth in the Act and related Legislative Rule, at W. Va. Code § 6B-1-3(m) and W. Va. Code R. § 158-6-3.3. The Requester states that his sister, a teacher, is supervised by the curriculum director, and his brother-in-law, an assistant principal, is supervised by the superintendent. Hence, the Board of Education has assigned the supervisory responsibility for the Requester's relatives to others in the school system.

The Ethics Commission holds that the continued employment of the Requester's sister and brother-in-law at the same school where the Requester serves as principal complies with the nepotism restrictions in the Act and related Legislative Rule, at W. Va. Code § 6B-2-5(b)(4) and W. Va. Code R. § 158-6-3, so long as the curriculum director or other person designated by the superintendent continues to supervise them and the Requester continues to follow the nepotism restrictions in the Legislative Rule.

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must 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, W. Va. Code §§ 6B-1-1 through 6B-3-11, and W. Va. Code § 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 public servants and other persons unless and until it is amended or revoked or the law is changed.

³ The Ethics Commission held in Advisory Opinion 2012-11 that the restrictions in W. Va. Code § 61-10-15 may cover persons with whom a public official or employee resides.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission