

Advisory Opinion 2019-03

Issued on March 7, 2019, by

The West Virginia Ethics Commission

Opinion Sought

A County School Superintendent asks whether teachers may prearrange relatives to substitute teach in their absence or place relatives on a preferred list of substitutes for their classroom.

Facts Relied Upon by the Commission

The Requester's school system utilizes an automated system that manages teacher absences and substitute job assignments. When a teacher creates an absence in the system, it searches and contacts a substitute for the job based on a general rotation list. The Requester states, however, that the system allows teachers to prearrange a substitute without the system calling the general list of available substitutes. The system also allows a teacher to make a preferred list of substitutes for the system to call before it calls the general list of available substitutes.

The Requester asks whether teachers utilizing the system may prearrange relatives to substitute teach in their absence or place relatives on a preferred list of substitutes for their classroom. The Requester states that teachers are not required to prearrange a substitute or make a preferred list and that others have the authority to make these decisions. The Requester states that school principals, a central office staff member and the Requester also have the authority to select substitutes should the need arise.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-1-3(m) provides:

"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) provides, 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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated

with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(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 provides, 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 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.

3.4. 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.

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The Ethics Act prohibits public officials or public employees from showing favoritism or granting patronage in the employment or working conditions of their relatives.¹ W. Va. Code § 6B-2-4(b)(4). To this end, the Ethics Commission's Legislative Rule regarding nepotism provides that "[t]o 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." W. Va. Code R. § 158-6-3.5.a. "If he or she is one of several people with the authority to make these decisions, others with authority *shall* make the decisions." *Id.* (emphasis added).

The Commission finds that teachers prearranging a substitute to cover their classroom and making a preferred list of substitutes constitute decisions affecting the employment and working conditions of those substitutes. Moreover, there are others with the authority to make these decisions, such as school principals. **The Ethics Commission therefore holds that teachers prearranging relatives to substitute and/or placing relatives on a preferred list of substitutes violates the Ethics Act's nepotism provisions at W. Va. Code § 6B-2-4(b)(4) and W. Va. Code R. § 158-6-3.5.a. when there are others with the authority to make these decisions.**

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, at W Va. Code §§ 68-1-1 through 6B-3-11, 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.


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

¹ A relative is defined as a "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-1-3(m).