

ADVISORY OPINION NO. 98-21

Issued On October 1, 1998 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

An **Executive Director of a City Housing Authority** asks whether it would be a violation of the Ethics Act for the Housing Authority to employ the spouse of an Authority Board Member.

FACTS RELIED UPON BY THE COMMISSION

The spouse of a City Housing Authority Board Member has expressed an interest in a temporary part-time employment position with an after-school program for children which is sponsored by the Housing Authority. The position is one which the Executive Director is authorized to fill without consulting with, or obtaining approval from, the Authority's Board. The Executive Director seeks to establish whether the Ethics Act prohibits the Authority's employment of a Board Member's spouse.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-1-2(c) provides in pertinent part that...certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official from the responsibility of voting or deciding a matter; however, 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.

West Virginia Code 6B-2-5(b)(1) provides in pertinent part that...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...

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No provision of the Ethics Act declares anyone ineligible for a job with a public agency simply because they are related to other agency personnel - even the person responsible for agency hiring. The Ethics Act does, however, contain a prohibition against public servants misusing their public positions, or the influence of those positions, for their own private gain, or the private gain of others.

Nepotism is one form of the misuse of office for private gain and is a violation of the Ethics Act. A public servant who uses his or her public position to give unmerited advantage to a friend or relative in an employment situation is guilty of nepotism.

The Authority must provide a fair and impartial selection process which is appropriate to the position being filled. This would include giving the public reasonable advance notice of the job opportunity. Notice is covered by Commission guidelines, established for situations such as this, which provide that:

- a. The notice should include a description of the job responsibilities, the qualifications required, the pay and the manner in which application for the job can be made.
- b. The method of giving notice will vary from job to job, but must be calculated to result in reasonable public awareness of the availability of the job.
- c. The notice must be made soon enough to give those members of the public who are interested an opportunity to make application.

Although failure to follow the guidelines is not, in and of itself, a violation of the Ethics Act, following them is strong evidence that hiring decisions are fair and evenhanded and not the result of misuse of office.

Because the Board Member's spouse is among those being considered for the position, the Ethics Act requires that he be recused from the process by which the successful candidate for the position is selected.

It would be a violation for any member of the Authority's Board or other Authority personnel to misuse their position to influence subordinates or Board members to give unwarranted advantage to the candidacy of a friend, relative or business associate. In the absence of such misconduct, the selection of the Board Member's spouse, by a fair and impartial process, for an Authority position for which she is qualified is entirely consistent with the provisions of the Ethics Act.

The Commission notes that this opinion is not intended as an expression of approval under applicable federal rules and regulations governing the grants which fund the Authority's after-school program.


Chairman