

Advisory Opinion 2024-11

Issued on December 5, 2024, by

The West Virginia Ethics Commission

Opinion Sought

A **Division of a State Department** asks whether a mother and daughter may work in the same agency when one's work output may affect the workload of the other.

Facts Relied Upon by the Commission

A division within the Division of a State Department is considering the promotion of an employee to the position of resource specialist. The question arises because the employee's mother works as the transaction account auditor in the same agency. Although the positions are within the same agency, neither position is involved in the hiring decisions or direct supervision of the other position. The agency's management structure includes a director, two assistant directors, and supervisors. The resource specialist has no supervisory duties and is directly supervised by a supervisor who answers directly to an assistant director. The transaction account auditor has no supervisory duties and is directly supervised by a different supervisor who answers to the other assistant director.

The resource specialist is responsible for negotiating, approving, and supervising the scope of work and cost estimates for the agency's consultants and contractors. The resource specialist is also responsible for the initial approval of the invoices submitted by the consultants and contractors. Once these invoices are approved by the resource specialist, the agency's director must give final approval of the invoices. After the director approves the invoices, the transaction account auditor is responsible for processing them pursuant to statewide agreements for payment with the State Auditor's Office.

The Requester explains it is possible, but not anticipated, that given this approval process, the person in the resource specialist's position could impact the working conditions of the transaction account auditor. For example, the resource specialist could select an existing state contractor, rather than a new one, which could result in less paperwork for the account auditor, her mother. The resource specialist could also, in theory, delay, intentionally or unintentionally, the processing of her own work for the purpose of alleviating the workload of her mother. The Requester asks if this is the type of working condition the Act prohibits.

Provisions Relied Upon by the Commission

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

(f) "Immediate family," with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren, and dependent parent or parents.

(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)(1) states, in relevant part:

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.

W. Va. Code § 6B-2-5(b)(4) states, in relevant part:

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 (2022). (Nepotism) 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 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.

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3.6. A public official may not vote on matters affecting the employment or working conditions of a relative unless the relative is a member of a class of persons affected. A class shall consist of not fewer than five similarly situated persons. For a public official's recusal to be effective, he or she must 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. . . .

Advisory Opinion

The Ethics Act prohibits public employees from intentionally using their public office for private gain to themselves or another person, including family members and relatives. W. Va. Code § 6B-2-5(b)(1) and (4). The relevant Legislative Rule, W. Va. Code R. § 158-6-3, at section 3.5.b., prohibits public employees from directly supervising a relative or a person with whom the employee resides. The Rule explains what is meant by “supervising” by stating: “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.” The Requester’s description of the interaction between the resource specialist and account auditor do not fall in any of the areas included in the description of supervising. Based on the plain language of the Rule and the facts asserted by the Requester, neither the position of resource specialist or account auditor directly supervises the other position. In fact, these job positions do not have any supervisory duties.

The Legislative Rule on nepotism also states: “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.” The Requester explains that the resource specialist’s work output may impact the workload of the account auditor. For example, if the daughter selected an existing contractor, rather than a new one, this could result in less paperwork for the account auditor, her mother.

The Legislature and the Commission have made clear that the Ethics Act does not prohibit relatives from working together in all instances. The prohibited working relationships are delineated in the Act and Legislative Rule (See above). The Ethics Commission has issued advisory opinions¹ explaining that a parent and child may not be employed in the same agency when one participates in the hiring or supervision of the other. But, that is not the issue today.

The issue in this request is whether the activities of the resource specialist “influence the working conditions” of a person holding the transaction account auditor position. The Ethics Commission has not addressed the full meaning of “working conditions” in previous opinions.² The Commission is unaware of a comprehensive list of items in

¹In [Advisory Opinion 2024-08](#), the Commission found that the Ethics Act does not prohibit a person from employment as the municipal judge in a city where her father is employed as the city attorney. In [Advisory Opinion 2012-24](#), the Ethics Commission held that a mayor’s father may be employed by the same city, and in [Advisory Opinion 2013-01](#), the Commission held that a mayor’s daughter may be employed by the same town. These opinions held, as required by the nepotism restrictions in the Ethics Act, that mayors (and other public officials and public employees) may not participate in or vote on matters affecting the employment or working conditions of their relatives unless the relative is affected as a member of and to no greater extent than a class of five or more similarly situated persons. W. Va. Code § 6B-2-5(j)(2)(A) and W. Va. Code R. § 158-6-3.6. Further, public officials and public employees may not directly supervise their relatives. W. Va. Code R. § 158-6-3.5.b.

²In [Advisory Opinion 2014-14](#), the Commission held that a city council member could vote on general issues affecting municipal employees such as better working conditions, including raises.

West Virginia law that identifies what is included in the term “working conditions.” The Commission, however, believes that in some instances, at least, workload may be a “working condition” contemplated by the term for purposes of the anti-nepotism laws.³ For example, if a job or position has the power to dictate the number of hours a relative is to work, this could be a working condition contemplated by the law. However, simply working together in a non-supervisory relationship at work is not prohibited if the workload is merely affected as a co-member of a team or project. It goes without saying that every employee’s work or performance in an agency may affect the workload, at least tangentially, of the other employees working in the agency or on a project. However, this type of effect on workload is at best an indirect one, if not in fact a speculative one. Consequently, the working situation described by the Requester does not create a prohibited working condition under the Act and Rule.

The Ethics Commission holds that the Ethics Act does not prohibit a mother and daughter from working in the same agency as co-workers when one’s work may only tangentially affect the workload of the other. The Ethics Act would prohibit, however, a relative from intentionally using her position to decrease or increase the workload of a relative.

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 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.

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

³See for example, Indeed Editors, “[What are working conditions? 20 factors that define working conditions](https://uk.indeed.com/career-advice/finding-a-job/what-are-working-conditions),” Indeed.com, July 1, 2024: “The amount of work an employee is expected to complete in a given period of time can have a big impact on their work and health. A too heavy workload may lead to stress and burnout, while a too light workload risks boredom and feelings of underutilisation. The type of industry an organization is in and the nature of specific positions often determine what’s considered an acceptable workload.” <https://uk.indeed.com/career-advice/finding-a-job/what-are-working-conditions>. (Last visited 11/27/2024.)