

ADVISORY OPINION NO. 94-18

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 7, 1994

GOVERNMENTAL BODY SEEKING OPINION

Spouse of a County Board of Education Member

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code §61-10-15 for the spouse of a County Board of Education member to be employed by that County Board of Education?

FACTS RELIED UPON BY THE COMMISSION

A County Board of Education has posted a notice of a job vacancy for a Special Education Director/Elementary Education Director/Staff Development Coordinator/Education Diagnostician. The duties of this position include the development and administration of appropriate services to special education students; working in cooperation with the central office staff and school personnel to implement goals for early and middle childhood curriculum instruction through the development, delivery, implementation and evaluation of prescribed curricular programs and goals; diagnostic prescriptive testing of students referred by classroom teachers and/or psychologists and coordinating test data for the referred students; and coordinating and supervising staff development programs for all personnel.

Although the position does not require an administrative certificate, the job is posted as .75 administrative and .25 teaching. The requestor would like to apply for this position. However, her spouse is currently serving as a member of that County Board of Education.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain or that of another person.

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected...public official...member of his...immediate family or business with which he...is associated may be a party to or have an interest in the profits or benefits of a contract which such 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...

West Virginia Code §61-10-15 states in pertinent part that...It shall be unlawful for any member of a county board...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control: Provided, however, That nothing herein shall be construed to prevent or make unlawful the employment of the spouse of such member...as principal or teacher, auxiliary or service employee in the public schools of any county...

ADVISORY OPINION

In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit the requestor from being employed by the County Board of Education when her spouse is a member of that Board.

Public Contracts

Pursuant to WV Code §6B-2-5(d)(1) no public official or member of his or her immediate family may have more than a limited interest in the profits or benefits of a public contract over which the public official has direct authority or control. As a member of the Board of Education, the requestor's spouse would have direct authority and control over all contracts, including employment contracts, entered into by the County Board of Education.

However, WV Code §6B-2-5(d)(1) specifically provides that nothing contained within that subsection shall be construed to prevent or make unlawful the employment of any person with any governmental body. Therefore, it would not be a violation of WV Code §6B-2-5(d)(1) for the requestor to be employed by the County Board of Education while her spouse is a member of that Board.

Private Gain

Pursuant to WV Code §6B-2-5(b)(1), public officials may not use their office or its resulting prestige for personal private gain or for the private gain of another. Therefore, the requestor's spouse may not use his position as a member of the County Board of Education to obtain, increase or promote the interests of his spouse as an employee of the Board of Education.

West Virginia Code §61-10-15

West Virginia Code §61-10-15 provides that it is a criminal violation for any county officer to be pecuniarily interested, directly or indirectly, in the proceeds of any contract or service when he may have voice, influence or control over the letting of such contract. Although this prohibition would include employment contracts, the statute specifically provides that nothing contained within it shall be construed to prevent the employment of the spouse of any such member as a principal, teacher, auxiliary or service employee in the public schools of any county.

However, the Commission notes that the protection of this proviso is not afforded to various other employment positions such as central office administrator. See W.Va. Education Assn. v. Preston County Bd. of Ed., 297 S.E.2d 444 (WV 1982). "Central Office Administrator" is defined in WV Code §18A-1-1(4) as "the superintendent, associate superintendent, assistant superintendent, and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system." (emphasis added)

In this instance the position is posted as .75 administrative with duties which reflect administrative responsibilities. The Commission therefore determines that the position of Special Education Director/Elementary Education Director/Staff Development Coordinator/Education Diagnostician as described would be considered a Central Office Administrator and would not be exempt from the provisions of WV Code §61-10-15.

Consequently, it would be a violation of WV Code §61-10-15 for the spouse of a County Board of Education member to be employed by that County Board of Education in the posted position since she would be considered a central office administrator.


Chairman