

ADVISORY OPINION NO. 95-01
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON FEBRUARY 2, 1995

GOVERNMENTAL BODY SEEKING OPINION

A County Board of Education Member

OPINION SOUGHT

Is it a violation of the Ethics Act or West Virginia Code §61-10-15 for the spouse of a County Board of Education Member to be employed as a County School Nurse?

FACTS RELIED UPON BY THE COMMISSION

The requester is currently serving as a member of a County Board of Education. His spouse would like to seek employment as a County School Nurse. She meets all the qualifications for the position as required by the job posting and State School laws.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-2(c) states in pertinent part that...state...and local governments have many part-time public officials...serving in elected and appointed capacities; and 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) 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 §61-10-15 states in pertinent part that...It shall be 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 for any county or district officer 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 any 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 requester's spouse from being employed by the County Board of Education when the requester is a member of that Board. However, 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 requester 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.

Further, WV Code §6B-1-2(c) provides that a public official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal" to him. The Commission previously defined "personal" as situations where a public official has any direct or indirect pecuniary interest in the matter, is affected in a manner which may affect his vote, or when voting would give the appearance of impropriety. The Commission has determined that in order for a public official's recusal to be effective he must physically remove himself from the room during the discussion and decision making process.

If the County Board of Education Member is called upon to consider employment matters or other issues which would directly affect his spouse, he should refrain from voting or taking other action regarding these matters since failure to do so would give the appearance of impropriety.

However, in Advisory Opinion #92-11 the Commission determined that the voting prohibition contained in WV Code §6B-1-2(c) does not apply to actions which involve the creation of laws, rules, regulations or policies which affect the public official's or family member's financial interest as a member of a class. There is no conflict of interest if the public official or his family member is not pecuniarily affected to a greater extent than any other member of the profession, occupation, group or class.

Therefore, the Commission finds that the County Board of Education member should not vote on any matter that may specifically and uniquely affect his spouse to a greater extent than other comparable employees.

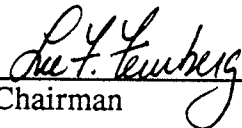
West Virginia Code §61-10-15

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 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.

West Virginia Code §18-1-1(g) provides that the term "teacher" shall mean teacher, supervisor, principal, superintendent, public school librarian, **registered professional nurse** and any other person regularly employed for instructional purposes in a public school in this state.

Therefore, provided the requester's spouse is a registered professional nurse or otherwise falls within this employment exemption category it would not be a violation of WV Code §61-10-15 for her to be employed as a County School Nurse.

Pursuant to WV Code §6B-2-3, any person acting in good faith reliance on an advisory opinion issued by the Ethics Commission is immune from the sanctions of WV Code §61-10-15, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon such opinion.


Chairman