

ADVISORY OPINION NO. 95-24

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 1, 1995

GOVERNMENTAL OFFICIAL SEEKING OPINION

A County Commissioner

OPINION SOUGHT

1. Is it a violation of the Ethics Act or WV Code §61-10-15 for the requester to vote on the County Sheriff's budget since his wife is employed by the County Sheriff's Department?
2. Is it a violation of the Ethics Act or WV Code §61-10-15 for the requester to serve as the County Sheriff while his spouse is employed by the County Sheriff's Department?
3. Is it a violation of the Ethics Act or WV Code §61-10-15 for the requester to serve as the County Sheriff while his emancipated son is employed by the County Sheriff's Department?

FACTS RELIED UPON BY THE COMMISSION

In 1992 the requester was elected to a position on the County Commission and is currently serving in that capacity. However, he would like to seek election to the position of County Sheriff. He has held that position in the past.

The requester's spouse is presently employed, in the same County, as a Deputy Sheriff. She is covered by the Deputy Sheriff's Civil Service Commission and has fourteen years of experience.

In March of 1992, the requester's son was hired as a Deputy Sheriff. He is an emancipated adult who resides separately from the requester. He is covered by the Deputy Sheriff's Civil Service Commission and has four years of experience.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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...or for any county 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.

ADVISORY OPINION

1 & 2. In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory provisions contained in the Ethics Act. The Commission has determined that there is no provision of the **Ethics Act** which prohibits the requester from serving as either a County Commissioner or as County Sheriff while his spouse is employed by the County Sheriff's Department. **However, the Commission notes that this is academic in light of the prohibition against all pecuniary interests in public contracts established in WV Code §61-10-15 and discussed below.**

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. Any person who violates this provision is guilty of a misdemeanor and is subject to removal from office. The Supreme Court of Appeals of West Virginia, in Cimino v. Bd. of Ed. of Marion Co., 210 S.E. 2d 485 (1974), applied this provision to employment contracts. Specifically, the Court held that it would be a violation of WV Code §61-10-15 for a cook to remain employed by the County School Board after her spouse was elected to serve on that County Board of Education.

The requester is a County Commissioner and would like to seek election to the position of County Sheriff. However, his spouse is employed as a Deputy Sheriff in that County and consequently, the requester would have a pecuniary interest in the employment contract and the resulting benefits which exists between the County and his spouse. Clearly, as a member of the County Commission or as the County Sheriff, the requester would have voice, influence or control over all contracts entered into by the County Commission or the County Sheriff's Department.

The West Virginia Supreme Court, in Fisher v. Jackson, 107 W.Va. 138. 147 S.E. 541 (1929), held that the recusal of a public official from voting on a particular matter in which he has a direct or indirect pecuniary interest was not sufficient to immunize that official from the sanctions now contained in WV Code §61-10-15. West Virginia Code §61-10-15 sanctions the mere existence of a pecuniary interest, thus the requester cannot obtain protection from the sanctions of the statute by abstaining from voting on issues which affect his spouse.

Therefore, it would be a violation of WV Code §61-10-15 for the requester to serve as a member of the County Commission or as the County Sheriff while his wife is employed by the County Sheriff's Department.

The Commission notes that the West Virginia Supreme Court, in Serge v. Matney, 273 S.E. 2d 818, at 820 (1981) held that

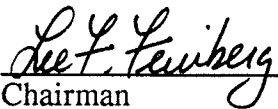
if the Legislature wishes to establish or provide that personnel who have tenure with the county as employees of one of the numerous county agencies can retain their jobs even though their husbands have been elected to the county commission, then the legislature should do so. We cannot read that into the present statute.

Pursuant to WV Code §6B-2-3 the Ethics Commission has the authority to interpret only the Ethics Act and WV Code §61-10-15. Also, the Commission is without authority to grant exemptions to or alter WV Code §61-10-15.

3. The Commission notes that WV Code §61-10-15 is not applicable to the situation outlined in this portion of the request since the requester would not be considered as having a direct or indirect interest in the employment contract between the county Sheriff's Department and his emancipated son.

In considering this section of the request, the Ethics Commission has analyzed the facts presented in light of the statutory provisions contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit the requester from serving as a member of the County Commission or as the County Sheriff when his emancipated son is employed by the County Sheriff's Department.

However, WV Code §6B-2-5(b)(1) provides that a public official may not use his 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 County Commissioner or as the County Sheriff to influence, obtain, increase or promote the interests of his son as an employee of the County Sheriff's Department.


Chairman