

ADVISORY OPINION NO. 93-47

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 6, 1994

GOVERNMENTAL BODY SEEKING OPINION

A County Sheriff

OPINION SOUGHT

Is it a violation of the Ethics Act for the son-in-law of a County Commissioner to be employed by the County Sheriff's Department?

FACTS RELIED UPON BY THE COMMISSION

The son-in-law of a County Commissioner was hired as a corrections officer for the County Sheriff's Department. He was hired through the normal hiring procedures which have been established in the County.

These procedures require the sheriff to advertise the vacancy in the local newspaper, accept written applications, interview the applicants and conduct background checks. After the Sheriff makes his selection, the name of the potential employee is submitted to the County Commission for final approval.

The employee in question does not reside with the County Commissioner and there is no financial indebtedness owed to the Commissioner by his son-in-law.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-2(c) states in pertinent part that...local governments have many part-time public officials...serving in elected...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 or public employee, 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 or her office or the prestige of his or her office for his or her 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...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

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 per se prohibit the County Commission from hiring the son-in-law of a Commissioner as a Corrections Officer.

Voting

Pursuant to WV Code §6B-1-2(c) a public official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal" to him. In many prior opinions (see Advisory Opinions #93-15, #93-18 and #93-27) the Commission has defined "personal" as situations where the 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 Commission member is called upon to consider employment matters or other issues which would directly affect his son-in-law, the County Commissioner 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 interests **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 Commissioner should not vote on any matter that may specifically and uniquely affect his son-in-law to a greater extent than other comparable county employees.

Private Gain

West Virginia Code §6B-2-5(b)(1) provides that a public official may not use his office for his own private gain or for the private gain of another. Consequently, the County Commissioner may not use his status or influence as a member of the County Commission to obtain, increase or promote the interests of his son-in-law. As previously noted, recusal from any participation in the decision making process would insulate the County Commissioner from appearing to violate the Ethics Act's prohibition against the use of his public office for the private gain of another.

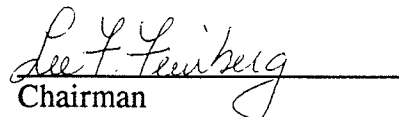
West Virginia Code §61-10-15

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.

However, the Ethics Commission has determined that the County Commissioner does not have either a direct or indirect pecuniary interest in a contract involving the employment of his son-in-law since the son-in-law does not reside with the County Commissioner and has no financial indebtedness or dependence upon the Commissioner. The mere fact that the County Commissioner's son-in-law is employed as a County Correctional Officer does not create a personal pecuniary interest for the Commissioner in the employment contract which would trigger the sanctions of WV Code §61-10-15.

Therefore, it would not be a violation of WV Code §61-10-15 for the son-in-law of a County Commissioner to be employed by the County Sheriff's Department.

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 section fifteen, article ten, chapter sixty-one, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon such opinion.


Chairman