

ADVISORY OPINION NO. 90-51

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 5, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Assessor

OPINION SOUGHT

Whether it is a violation of the Act for a County Assessor to employ his son during the summer as a part-time Deputy Assessor?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor has worked as a Deputy Assessor since 1965. On June 15, 1988 the previous County Assessor hired the requestor's son as a Deputy Assessor. There was a time when the requestor and his son were fellow employees at the County Assessor's office.

During the late summer of 1988 the previous County Assessor took early retirement. The requestor was placed on the ballot as a nominee for County Assessor. He won the election and became the County Assessor as of January 1, 1989. In the Fall of 1989 his son was employed as a County teacher.

The requestor would like to hire his son as a part-time employee when he is not teaching during the summer and has done so since 1987. His son would act as a Field Representative, gathering information for appraisers. While acting as a field representative, the requestor's son would have no administrative duties nor would he receive any additional benefits such as retirement or insurance. The requestor's son would be working during the day June through August and in September, during the evening. The field representative's salary is \$2400 yearly which would be divided into a three month period, thus the requestor's son would receive \$800 per month during the summer.

There are presently eight full-time field representatives employed by the assessor's office and "on call". There are approximately fifteen applications on file, however the requestor has categorized these applicants as being primarily qualified in clerical areas. Since there are only a few hours available to the field representatives except during the summer months, the position has never been publicly advertised.

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 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. The performance of usual and customary constituent services, without compensation, does not constitute the use of prestige of office for private gain.

ADVISORY OPINION

It is the Commission's opinion that for the County Assessor to hire his son on a part-time basis during the summer months would give the appearance of the public official using his office for the private gain of a family member in violation of subsection 5(b)(1).

The Commission understands that the son was formerly employed in the Assessor's office and has some experience with the work.

However, since the Commission has determined it would be a violation of subsection 5(b)(1) the public official now has the option to seek a written exemption pursuant to subsection 5(b)(2) from the Ethics Commission if he can demonstrate:

- (1) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state;
- (2) The office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and
- (3) The person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.


Chairman