

ADVISORY OPINION NO. 90-94

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Sheriff

OPINION SOUGHT

Whether it was a violation of subsection 6B-2-5(b)(1) of the Act for a County Sheriff in January 1989 to hire his daughter to fill a vacancy in the Accounting Division of his Department when he did not give public notice of the vacancy and he was the only one who participated in the decision to hire her?

OTHER FACTS RELIED UPON BY THE COMMISSION

A County sheriff was elected in 1988. When he took office in January 1989 he accepted between 50-75 applications to fill vacancies within his Department and has continued to do so.

The Sheriff received eight applications for the part-time position of Office Manager. The availability of this position was made known by community word of mouth and applications were accepted. The procedure for hiring was that the Sheriff received all applications, screened applicants and interviewed prospective employees. After deciding who he felt was best qualified for the job the Sheriff submitted his choice (his daughter's name) to the County Commission for approval.

The Sheriff hired his daughter in January 1989 to fill the part-time position as Office Manager and to conduct the accounting services for the office. The County Commission members approved the Sheriff's daughter's employment.

The Sheriff states his daughter was the most qualified applicant for the position since she had a four year degree in Business Administration with a concentration in Accounting and Management and a minor in Economics from a State College. The daughter has passed two of four parts of the Certified Public Accountants test, has maintained the books for a local attorney, worked at H & R Block during the Tax season, established and maintained the books for a local retail hardware and clothing store and answered questions from the County Clerk's Office concerning their accounting system.

The Office Manager's position requires her to oversee the bookkeeping process, order office supplies, teach other employees the skills required to operate the office and supervise daily operations. The Office Manager has established a new accounting system in the Sheriff's office and is teaching other employees the necessary skills to maintain the books and process the monthly statements.

To date the Sheriff states that he has not received any other applications from individuals whose qualifications would be better than his daughter's. Also, the Sheriff's daughter is a non-dependent family member, who is married and lives in a separate residence within the County.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-4(v) states in pertinent part that the provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine...

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.

ADVISORY OPINION

First, the Commission would note that the questioned conduct in this case occurred prior to October 1, 1989 which is the date after which the Commission may consider violations of the Act. However, since the daughter's employment continues after such date and as a matter of clarification for other public officials and employees the Commission will render an opinion on this matter.

The Commission previously determined in Advisory Opinion No. 90-51 that since the assessor in that case did not publicly advertise or make known the availability of an employment position within his department, or interview other applicants, the employment of his son during the summer months gave the appearance of the public official intentionally using his office for the private gain of a family member.

In this instance the vacancy within the Sheriff's Department was made known only to the public by word of mouth and was also not publicly advertised. Although the applicant's employment was approved by the County Commission, the Sheriff screened and interviewed the applicants and recommended the one he wanted for the job to the County Commission. This applicant was a family member of the Sheriff and it is the opinion of the Ethics Commission that this situation does give the appearance of nepotism which is hereafter defined by the Commission as: **"favoritism shown or patronage granted by persons in high office to relatives or close friends without consideration of other applicants or qualifications required to perform the job;"** and would be a violation of 6B-2-5(b)(1) of the Ethics Act.

Therefore, as a matter of clarification the Commission finds that if the hiring were done after October 1, 1989 it would be a violation of the Act for the Sheriff to hire his daughter when: (1) the vacancy in his Department was not publicly advertised; (2) the applicant screening and recommendation process was conducted by the Sheriff only and no independent decision-makers were involved.

However, since the "hiring" was done before the Ethics Act was effective the Commission is without authority to hold such actions a violation.

However, since the employment continues the Sheriff should be mindful that there is a potential for additional violations of subsection 6B-2-5(b)(1) of the Act when raises, promotions, bonuses or any "benefits" are given by the sheriff to his daughter if such could be shown to fall within the definition of nepotism.


Chairman