

ADVISORY OPINION NO. 90-144
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON AUGUST 2, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Prosecuting Attorney

OPINION SOUGHT

Whether it is a violation of the Act for a County to employ the Prosecuting Attorney's son as a part-time Assistant Prosecuting Attorney when the position has been publicly advertised, the final hiring decision involves other individuals and the family member is qualified for the position?

OTHER FACTS RELIED UPON BY THE COMMISSION

A County Prosecutor has a part-time assistant prosecuting attorney position available in his office. The Prosecuting Attorney's son is a recent law school graduate and has expressed an interest in being hired for this position as a part-time assistant prosecuting attorney.

The Prosecuting Attorney has devised a procedure for the selection of the new assistant prosecuting attorney. The position will be advertised in both a state-wide and local newspaper. Following such notice, a request will be made to the Circuit Judge of the County to designate one or more attorneys who would be willing to volunteer their services in the task of reviewing the applications and qualifications of each applicant and conducting such interviews as they may find necessary.

Upon completion of the review of the applicants these attorneys will meet in a closed meeting of the County Commission (without the Prosecuting Attorney being present) to discuss their findings regarding the applicants. At this meeting a written recommendation shall be issued to the County Commission nominating one person for the available position.

The County Commission will review the nomination and upon accepting this recommendation the applicant will be employed in the position of part-time assistant prosecuting attorney.

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 or public employee 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...

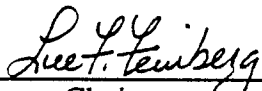
ADVISORY OPINION

The Commission previously determined in Advisory Opinion No. 90-51 that since the requestor in that case did not publicly advertise or make known the availability of a position within his department, did not interview other applicants, and was the only decision-maker involved in the process, the part-time 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.

However, the Commission established certain procedures in Advisory Opinion No.90-102 which if followed, would eliminate the appearance of nepotism and the use of public office for private gain in violation of subsection 6B-2-5(b)(1).

In this instance the requestor followed the established guidelines. Specifically, the vacancy in the Prosecuting Attorney's office will be made known to the general public through both a state-wide and local newspaper advertisement, the applicant's employment requires approval by a majority vote of the County Commission and the most qualified applicant will be given the job. Although one applicant who may be given the position is a family member of the Prosecuting Attorney, it is the opinion of the Ethics Commission that this situation would not fall within the definition of nepotism (i.e. favoritism shown or patronage granted by persons in high office to relatives or close friends without notice and consideration of other applicants or qualifications required to perform the job).

Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(b)(1) of the Act if the County decides to hire the Prosecuting Attorney's son if the guidelines are followed for the reasons stated above.



Chairman