

ADVISORY OPINION NO. 96-45

Issued on September 5, 1996 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Prosecuting Attorney

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 for a public official to hire his adult child or the adult child of a co-worker in a part-time, temporary position?

FACTS RELIED UPON BY THE COMMISSION

A Prosecuting Attorney has an immediate need to fill a part-time position for paralegal/secretary/receptionist at \$6.50 per hour 2-3 days per week. This position will likely end in less than four months. The requester has approached several qualified individuals about the position but has been refused because of the part-time, short term nature of the job and its relatively low salary.

The requester would like to consider hiring either his own adult child or the adult child of an assistant prosecutor. Neither of these individuals are financially dependent on their parents. Both of them have volunteered their services to the office in the past when it was short-handed and therefore they have a general familiarity with the operations of the office.

One of the potential employees will be a graduate student while the other has over three years of college credit.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 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.

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...or any member of any other county or district board, or for any county or district 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.

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West Virginia Code 61-10-15

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract.

In earlier opinions, A.O. 95-24 and A.O. 96-33, the Commission held that any financial interests emancipated children had in sales contracts with a public agency or employment with a public agency did not result in a financial interest for their public servant parent who was subject to the provisions of WV Code 61-10-15. Similarly, in this case the requester does not have a financial interest in the possible hiring of an adult child who is not financially dependent upon the requester.


Therefore, it would not be a violation of WV Code 61-10-15 if the requester hired his adult, financially independent child or the adult, financially independent child of an assistant in a part-time temporary clerical position.

Private Gain

West Virginia Code 6B-2-5(b)(1) provides that public servants may not use their position or its resulting prestige for personal private gain or for the private gain of another. Consequently, the requester may not use his position as a prosecuting attorney to improperly influence, obtain, increase or promote the interests of his adult child.

This provision does not, however, automatically prohibit the requester from hiring either his own adult child or the adult child of an assistant prosecutor if those individuals meet the basic qualifications for the position. The requester can make a decision to employ either of those individuals without violating the Ethics Act if he acts in a fair and impartial manner.

The requester is referred to the Commission's Legislative Rule at 158 CSR §6-3 on nepotism for guidance on this issue.


Chairman