

ADVISORY OPINION NO. 89-102

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

Chairman of a Public Service District

OPINION SOUGHT

Whether it is a violation of the Act when the spouse of a Public Service District Chairman is also employed by the Public Service District?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Chairman has been on the Board of the Public Service District since May 1980 and her spouse has been a full-time employee since September 1983. They were married in November 1985.

The Chairman does not receive a salary but does receive a Board meeting expense of \$100 which is approved by the West Virginia Public Service Commission. The Commission has informed the District to terminate the spouse's employment because of his pecuniary interest.

The Chairman requests an exemption on the grounds that it would cause a hardship on their household because of the scarcity of jobs in the area.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no...appointed public official...or member of his or her immediate family...may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority...Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

West Virginia Code 6B-2-5(d)(3) states that where the provisions of subdivision (1)...of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivision (1)...

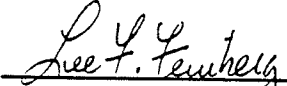
ADVISORY OPINION

An analysis of the facts presented and pertinent statutory provisions of West Virginia Code 6B-2-5(d)(1) follows:

1. The Chairman of the Public Service District is an appointed public official.
2. The Chairman's spouse is employed full-time by the Public Service District.
3. However, the legislature specifically provided that nothing in the Ethics Act shall be construed to prevent or make unlawful the employment of any person with any governmental body.
4. Therefore, it is not a violation of subsection (d) for a part-time appointed public official's spouse to be employed full-time by the governmental agency over which the official has direct authority.

The Commission would note that this opinion is limited to a review of the Ethics Act. Therefore, nothing herein should be construed to supersede any rules and regulations of the Public Service Commission.

Furthermore, the Commission would remind the public official that subsection (b)(1) of the Act prohibits a public official from intentionally using her position or prestige for the financial gain of another.



Chairman