

ADVISORY OPINION NO. 90-102
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A County Prosecuting Attorney

OPINION SOUGHT

Whether it would be a violation of the Act for a County Prosecuting Attorney to hire his cousin as a part-time summer law intern when the position has been publicly advertised, the final hiring decision includes other individuals and the family member is qualified for the position?

OTHER FACTS RELIED UPON BY THE COMMISSION

In the past the County Prosecuting Attorney has hired a summer intern to work in the Prosecuting Attorney's office. The Prosecuting Attorney attempts to fill the position with an individual from the County who is interested in pursuing a career in the practice of law. This serves to absorb some of the work load in the office and helps the individual to determine if he or she is serious about pursuing a career in the field of law.

The position is being advertised in the local paper and all applicants who respond to the advertisement will be interviewed. The final decision on a specific applicant will be made by a majority vote of a committee which consists of the Prosecuting Attorney and three staff members.

To date the Prosecuting Attorney has interviewed two individuals for the summer internship position. The first applicant has completed a year at a junior college but has no previous experience in the legal field. The second applicant was employed by the Prosecuting Attorney's office the previous summer, has completed his undergraduate degree and is currently waiting to be accepted into Law School.

Unless a more qualified applicant is interviewed, the County Prosecuting Attorney would like to place the name of the second applicant before the committee for a vote because of his prior experience and education. However, that individual is his first cousin.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code subsection 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

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 the position within his department, or interview other applicants, and was the only decision-maker involved in the process, 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.

However, in this instance the vacancy in the Prosecuting Attorney's office was made known to the general public through a local newspaper advertisement, the applicant's employment requires approval by a majority vote of the committee and the most qualified applicant will be given the job. Although the applicant for the position is a family member of the Prosecuting Attorney, it is the opinion of the Ethics Commission that this situation does 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 for the Prosecuting Attorney to hire his first cousin for the reasons stated above, if he is deemed by the hiring committee to be the most qualified applicant for the employment position.


Chairman