

ADVISORY OPINION NO. 96-56

Issued on December 5, 1996 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

A Magistrate

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 for a Magistrate to hire the spouse of a Sheriff?

FACTS RELIED UPON BY THE COMMISSION

A newly elected Magistrate will have to fill the vacant position of Magistrate Assistant. One of the persons under consideration is the wife of the present Sheriff. This person has worked in the office of the Prosecuting Attorney and has a great deal of knowledge about the court system. The Magistrate-elect is concerned to establish whether the Ethics Act would prohibit the Sheriff's wife from being hired for the position.

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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful 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.

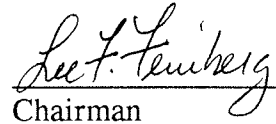
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No provision of the Ethics Act declares anyone ineligible for consideration for a job with a public agency because they are related to the person doing the hiring or to others employed by the agency. However, the Ethics Act does contain a prohibition against public servants misusing their public positions for their own private gain or the private gain of others. Nepotism is one

form of the misuse of office for private gain and is a violation of the Ethics Act. A public servant who uses his or her public position to give unmerited advantage to a friend or relative in an employment situation is guilty of nepotism. A copy of the Commission's legislative rules on Nepotism, 158 CSR 6.3, is enclosed with this opinion for the requester's consideration.

Because it appears from the facts of this case that the Sheriff's spouse has the experience and qualifications to merit consideration for the position, it would not be a violation of the Ethics Act or WV Code 61-10-15 for the Magistrate-elect to hire her to fill the Magistrate Assistant's position. The Commission's decision is based upon the understanding that the Sheriff has made no attempt to use the prestige or influence of his position to obtain preferential treatment for his spouse.

Note: Some outright employment prohibitions do exist outside the Ethics Act and are unaffected by rulings of this Commission. See for example: WV Code 6-10-1 (employment of wife at public expense prohibited) and WV Code 17-19-8 (unlawful to employ relatives on roads).


Chairman