

ADVISORY OPINION NO. 97-20

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WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Attorney for Municipal Housing Authorities

OPINION SOUGHT

Is it a violation of the Ethics Act if Housing Authorities hire a relative of two Board members?

FACTS RELIED UPON BY THE COMMISSION

Two Municipal Housing Authorities have different Boards of Commissioners but share the services of one executive director. When a vacancy for the executive director's position occurred, each Authority nominated one of its members to serve as a search committee. A public notice was placed in the local newspaper seeking applications.

The search committee reviewed the applications and recommended their selection of the top three candidates to a special joint session of the two Boards. The person hired at the joint meeting is the emancipated daughter and daughter-in-law of two Board members. She had experience working for one of the Authorities for over nine years in a variety of positions. Neither of the related Board members participated in the screening process or the final decision to select a new executive director.

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.

ADVISORY OPINION

No provision of the Ethics Act disqualifies a person from consideration for employment by a governmental agency simply because he or she is related to someone already serving with the agency.

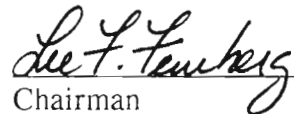
The Act does prohibit public servants from using their positions, or the influence of their positions, to unfairly advance the employment prospects of their relatives - or even their friends

or business associates. Legislative rules of the Ethics Commission establish a hiring procedure aimed at insuring that employment decisions are arrived at in a fair and evenhanded manner.

The Commission's rules suggest that the availability of any position be advertised and that the interested person be recused from discussing or voting on the hiring decisions. That is to say that a relative of a candidate for an agency job should not take part in the selection process by which the job is awarded. CSR 158-6-3.

While it is not necessarily a violation of the Ethics Act if an agency fails to do so, following the employment procedure suggested by the Ethics Commission helps protect public servants against claims of favoritism, if a relative is hired. The procedure takes pains to avoid the opportunity for nepotism, without arbitrarily denying employment opportunity to qualified candidates simply because they are related to agency personnel.

It is not a violation of the Ethics Act for the Housing Authorities to hire a relative of two Board members, if the person is competent and was hired by a suitable procedure conducted in a fair and impartial manner.


Chairman