

ADVISORY OPINION NO. 97-34

Issued on December 4, 1997 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Administrator of a County Health Department

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 if a County Health Department hires the spouse of the Department's Administrator?

FACTS RELIED UPON BY THE COMMISSION

The County Health Department needs to hire a replacement for a retiring office assistant. The State Personnel Division assisted the Health Department in posting the job opening and soliciting applications from qualified personnel available to fill the position on a timely basis. However, the posting was sent only to County Health Departments and State agencies and would be seen by persons already employed. The Health Department did not request the State Personnel Division to provide a Register of eligible candidates. Such a Register would likely provide a larger pool of qualified applicants.

The Health Department Board interviewed the two qualified applicants who responded and selected one who subsequently proved to be ineligible for the position. The other applicant, who is also well qualified for the position, is the spouse of the Health Department's Administrator. The Administrator, who has been recused from the hiring process, now asks if it would be a violation of the Ethics Act or WV Code § 61-10-15 if his spouse were hired to fill 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.

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

ADVISORY OPINION

The Ethics Act

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.

Public servants who are involved in an agency's hiring decisions need to take special care when a friend or relative is to be considered for a position with their agency. In such situations they should insure that appropriate public notice of the job opening is given and then remove themselves from the selection process to the greatest extent possible. They should also insure that the successful candidate is qualified for the position.

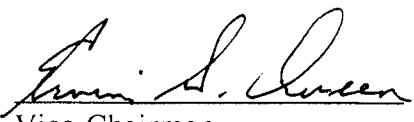
In this case the Health Department should request a Register of qualified applicants. If an impartial evaluation of the applicants by the Health Department Board results in a consensus that the requester's spouse is the most suitable person for the position, it would not violate the Ethics Act if the Health Department then hires the spouse.

West Virginia Code 61-10-15

WV Code 61-10-15 imposes a prohibition against certain county personnel having a personal financial interest in a public contract over which their public position give them voice, influence or control. The Administrator is deemed to have a financial interest in his spouse's employment contract.

However, WV Code 61-10-15 does not apply to all county personnel. It applies only to certain enumerated positions, e.g. county commissioners and secretaries of county school boards, and to any county "officer". The Administrator's position is not one of the enumerated positions and 61-10-15 will apply to him only if he is considered a county "officer."

The Commission finds that the "Administrator" is an employee of the County Health Department and is not a county "officer" as that term is used in WV Code 61-10-15. Therefore, the Administrator is not covered by 61-10-15 and it would not be a violation if his spouse were hired by the Health Department.


Vice-Chairman