

ADVISORY OPINION NO. 98-05

**Issued on March 5, 1998 by the
WEST VIRGINIA ETHICS COMMISSION**

PUBLIC SERVANT SEEKING OPINION

Employees of a County Solid Waste Authority.

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 if the child of a County Solid Waste Authority employee is employed by that Authority?

Is it a violation of the Ethics Act or WV Code 61-10-15 if the spouse of a County Solid Waste Authority employee is employed by that Authority?

FACTS RELIED UPON BY THE COMMISSION

A County Solid Waste Authority received grant monies which allowed it to hire two part-time employees for a portion of its operation. The Authority's Director of that operation placed an ad in the local newspaper seeking applicants for the jobs. The Director and another employee then screened the applicants and recommended two people for hiring based upon past experience with the program as volunteers.

The grant monies were received before the Board of the Solid Waste Authority met and the Director placed the two individuals on the payroll. The two persons selected were the dependant son of the Director and the spouse of the employee.

The Authority has instructed the Director to determine if the Ethics Act or WV Code 61-10-15 would prohibit the hiring of these relatives.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...district school officer...supervisor or superintendent, principal or teacher of public schools, or 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

West Virginia Code 61-10-15

West Virginia Code 61-10-15 prohibits certain county personnel from having a personal financial interest in public contracts over which their public positions give them voice, influence or control. Both the Director and the employee have financial interests in the employment of their dependant son and spouse.

However, WV Code 61-10-15 does not apply to all county personnel. Rather, it applies only to certain enumerated positions, e.g. county commissioners, secretaries of county school boards, and to any county "officer". Neither the Director nor the employee are "officers" or one of the persons specifically enumerated in WV Code 61-10-15. Therefore they are not covered by the provisions of that statute and it would not be a violation of WV Code 61-10-15 if the son or spouse were hired by the Solid Waste Authority.

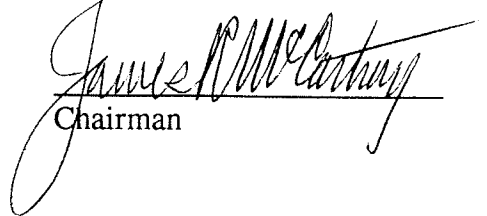
The Ethics Act

No provision of the Ethics Act makes a person ineligible for consideration for a job with a public agency simply because they are related to the person doing the hiring or to others employed in the agency. The Act does, however, contain a prohibition against public servants misusing their public positions for their own private gain or the private gain of others.

Public servants who are involved in an agency's hiring decisions must take special care when a relative is considered for employment with their agency. The legislative rules of the Ethics Commission on nepotism encourage public servants to ensure that appropriate public notice of a job opening is given and then excuse themselves from the hiring process to the greatest extent possible.

Advisory Opinion 97-34 involved a hiring decision by a County Health Department. The Commission held that if, after a broad pool of applicants was solicited, a consensus of the Department's Board felt that the spouse of its Administrator was the most suitable person for the position, it would not violate the Ethics Act if the Department then voted to hire the spouse. In that case the Administrator recused himself from any evaluation of candidates or other role in the hiring process.

In this case the Commission finds that the public notice of the employment positions was adequate. It further finds that both the Director and the employee should take no role in evaluating the applicants for the part-time positions. If the Solid Waste Authority's Board finds that the son and spouse are the most suitable persons for these positions, then it would not violate the Ethics Act if they are hired.


Chairman