

ADVISORY OPINION NO. 98-12

Issued on May 7, 1998 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

State employee

OPINION SOUGHT

A State employee asks if it is a violation of the Ethics Act for his son to be employed by a company that owns a subsidiary company which is subject to his regulatory authority?

FACTS RELIED UPON BY THE COMMISSION

The requester is an administrator with a State regulatory agency. He has broad regulatory authority, both personally and through his subordinates. His son will attend college in the fall and has applied for a summer job with a company which owns a subsidiary company that is regulated by the requester.

The requester has taken no action to advance his son's application for employment, but is concerned to establish whether the Ethics Act disqualifies his son from employment by a company with an indirect regulatory relationship with his agency.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

WV 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.

WV Code 6B-2-5(h) states in pertinent part that ... no full-time official or full-time public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to (sic) which he or she is working or a subordinate is known by him or her to be working.

...

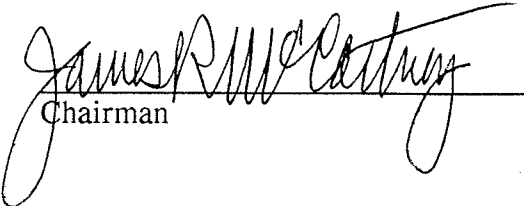
(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

ADVISORY OPINION

Although the Ethics Act prohibits full-time public servants from being employed by persons or businesses that are subject to their personal regulatory authority, or the personal regulatory authority of their subordinates, this prohibition does not extend to their family members.

Consequently, no provision of the Ethics Act disqualifies a public servant's immediate family members from being employed by a company which owns another company that is regulated by the public servant or the public servant's subordinates.

While there is no suggestion of such conduct present in this case, the Ethics Act would prohibit the requester from using the influence of his public position to promote his son's employment interests. Absent such misconduct, it is not a violation of the Ethics Act for the requester's son to be employed by the company which owns a regulated subsidiary company.


Chairman