

West Virginia Ethics Commission



Voting Provisions of the WV Ethics Act

Voting on Certain Matters is Prohibited

Public officials may not vote on a matter in which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest.

Public officials or their immediate family members are considered to be “associated” with a business if either the public official or an immediate family member is a director, officer, owner, employee or compensated agent, or if he or she owns 5% or more of the outstanding stock of any class.

Public officials may not vote on a personnel matter involving the public official’s relative or person with whom the public official resides.

Family and Relatives

The Act defines “immediate family” to include the spouse with whom an individual is living as husband or wife as well as any dependent children, dependent grandchildren or dependent parents.

The Act defines “relative” as a spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.

Non-profits and Financial Institutions

The Ethics Act further prohibits voting to appropriate public funds or to award a contract to a non-profit corporation if the public official or an immediate family member is employed by or is a compensated officer or board member of the non-profit. If the public official or immediate family member is an uncompensated officer or board

member of the non-profit, then the public official may vote on the matter only if the public official publicly discloses such relationship to the nonprofit. Such disclosure must be made on the agenda item relating to the appropriation or contract, if known at the time of the agenda, by the public official at the meeting prior to the vote, and in the minutes of the meeting.

Further, a public official who is employed by a financial institution, and whose primary responsibilities with the institution include consumer and commercial lending, may not vote on a matter which involves a customer of the financial institution.

This prohibition only applies if the amount of the loan or loans to the customer exceeds \$15,000 in a calendar year, and the public official was directly involved in approving a loan to that customer within the past 12 months, or is currently considering such a loan.

Public Officials May Vote

Public officials may vote on a matter involving a spouse, immediate family member, relative, or business with which they are associated, if they are affected by the matter as a member of a profession, occupation, class of persons or class of businesses. The law defines a class as consisting of not less than five similarly situated persons or businesses.

A public official may vote on a matter affecting a publicly traded company so long as: (1) the public official and dependent family members individually or jointly own no more than 5% of the company's issued stock; (2) the value of the stocks individually or jointly owned is less than \$10,000, and (3) prior to casting a vote, the public official discloses his or her interest in the publicly traded company.

Members of the Legislature

Legislative voting is governed by a separate provision in the Ethics Act. Legislators are permitted to vote after obtaining a ruling from the presiding officer in their chamber regarding any potential conflict. Legislators who have asked to be excused from voting, or who have made inquiry as to whether they should be excused from voting on a particular matter, and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of an Ethics Act voting violation for a vote so cast.

How Recusal Works

For a public official's recusal to be effective, the Ethics Act requires that he or she excuse himself or herself from participating in the discussion and the decision-

making process by physically removing himself or herself from the room during the period. The public official also must fully disclose his or her interests and recuse himself or herself from voting on the issue.

If a public official has an interest in the profits or benefits of a public contract and the contract is not otherwise prohibited under the public contract provisions of the Ethics Act, the public official must follow the above recusal provisions and additionally disclose the amount of interest in the contract held directly or indirectly by the official or an immediate family member. For more information, refer to the Guideline entitled Prohibited Interest in a Public Contract.

The meeting's minutes should reflect the recusal and the reason for the recusal.

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Revised 10/3/2019