

ADVISORY OPINION NO. 98-02

Issued on February 5, 1998 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Member of City Council

OPINION SOUGHT

Is it a violation of the Ethics Act if a member of City Council votes on a matter which indirectly affects the interests of a client?

FACTS RELIED UPON BY THE COMMISSION

A non-profit Foundation has an issue pending before a City Council which will require a vote. The requester is a member of City Council and an attorney engaged in private practice. The requester and his firm have provided substantial legal services for companies in which the President of the Foundation is an officer.

Neither the requester nor his firm represent the Foundation and there is no relationship between the Foundation and the firm's clients.

The requester is concerned to establish whether he may vote on the pending matter which may effect the interests of the Foundation.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-1-2(c) states in pertinent part that...the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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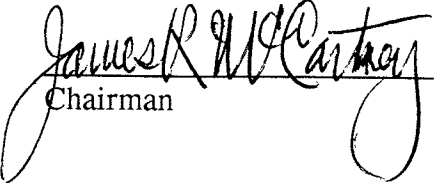
In Advisory Opinion 91-38 a County Commissioner stated that he was a director of a company which provided services to a proposed solid waste facility, that he leased a building to the company, and that his brother was an employee of the company. In light of those interests, the County Commissioner inquired whether he would violate the Ethics Act if he participated in the discussion and vote regarding the approval of the solid waste disposal facility.

In its response, the Ethics Commission held that no provision of the Ethics Act would prohibit the County Commissioner from participating in either the discussion or vote to approve the operation of the solid waste facility.

However, the Commission did note that although it would not be a direct violation of the Act if the County Commissioner voted, WV Code 6B-1-2(c) provides that part-time public officials **should** excuse themselves from voting or deciding matters that have become "personal" to them. Advisory opinions and the Legislative Rules of the Commission state that a matter is "personal" to a public servant if he or she has a direct or indirect financial interest in the matter, is affected in a manner which may influence his or her vote, or voting would clearly give the appearance of impropriety.

The Commission concluded that the matter did present an issue that was "personal" to the County Commissioner and that he should not vote.

In this case, the Commission finds that under the facts provided there is no evidence that voting on the issue before the City Council would be a violation of the Ethics Act's code of conduct. However, it is clear that this matter is "personal" to the requester in light of the substantial legal services provided by him and his firm for companies with which the Foundation President is affiliated. Therefore, he should recuse himself from any discussion or vote on the issue.


Chairman