

ADVISORY OPINION NO. 99-19

Issued On August 5, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A member of a County Board of Education asks to what extent she may participate in Board decisions concerning pending litigation against the Board in which she was involved prior to her election to the Board.

FACTS RELIED UPON BY THE COMMISSION

Prior to her election to the Board, the Requester was a volunteer member of a nonprofit citizen's group pertaining to children's education. On behalf of the group, she signed a legal agreement with the Board to resolve an unspecified controversy. Later, she initiated a lawsuit on behalf of the group alleging that the Board of Education had violated the legal agreement.

One month after the Requester was elected to the Board of Education, she resigned her position with the citizen's group and caused her name to be removed from the litigation. She states that she has no financial involvement in the litigation, which is still pending.

The Board's lawyer wants the Board to make certain decisions regarding the course of the lawsuit, and the Requester wants to participate in these decisions to the extent permitted by statute.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-1-2(c) provides in pertinent part that...The Legislature finds 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.

ADVISORY OPINION

The Ethics Commission considered a similar situation in Advisory Opinion 92-31. There a citizens group, and the Requester individually, had instituted a law suit against the Board . This was prior to his election to the Board and the suit had been voluntarily dismissed, but there was a Board motion pending that it be awarded its costs incurred defending the suit. In that situation, the Requester had a personal financial interest in the Board's decisions on the motion for costs.

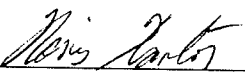
The Commission ruled that the Requester's financial interest in the matter prevented him from taking any part in the Board's action in regard to the pending motion. The Commission acknowledged that the Requester's earlier involvement as a litigant in the issues underlying that suit did not disqualify him from taking official board action on those issues.

W. Va. Code § 6B-1-2(c) provides that a part-time public official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal" to that official.

The Commission considers a matter to be "personal" when the public official has any direct or indirect pecuniary interest in the matter, is affected in a manner which may influence his or her vote, or would clearly give the appearance of impropriety. The Commission's rules do permit public servants to vote on a matter in which they have an interest , if they are affected as a member of, and to no greater extent than any other member of, a profession, occupation or class.

In the present situation, the Requester appears to have no direct or indirect pecuniary interest in the outcome of the lawsuit, and, as AO 92-31 makes clear, she may take official action as a board member on any underlying issues which resulted in the lawsuit originally being filed.

The Commission considers the course and outcome of the litigation against the school board to be "personal" to the Requester, as that term is used in 6B-1-2(c), and finds that she should be recused from all Board action concerning the disposition of the pending suit.



Chairman