

ADVISORY OPINION NO. 2000-02

Issued On March 2, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Trustee of a Municipal Hospital** asks if her private medical practice, which competes with some services provided by the Hospital, disqualifies her from serving on its Board of Trustees.

FACTS RELIED UPON BY THE COMMISSION

The Trustee is an OB-GYN physician who lives and maintains her solo private practice in the Municipality. She is associated by contract with a group of physicians who deliver at a competing hospital in a neighboring community. With the exception of her deliveries, all of which are performed in the other hospital, her practice is confined to the Municipality. She has no financial interest in the other hospital and does not sit on its Board or any of its committees.

The Trustee is a native of the Municipality. She has postgraduate training in medical management and finance, has a certificate in Medical Management and is Board Certified in Quality Assurance and Utilization Review.

The Municipal Hospital operates its own OB-GYN clinic and employs two OB-GYN physicians who, as Hospital employees, are in competition with the Trustee's private practice. The three physicians are the only OB-GYN specialists located principally in the Hospital's primary service area. The Trustee asks whether this competition disqualifies her from serving on the Board of Trustees or from voting on matters affecting the Hospital's OB-GYN practice.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5 (e) *Confidential information*. No present or former public official or public employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

WV Legislative Rule 158-9-2.1 A public official or public employee may not vote on or decide a matter that has become "personal" to that individual.

WV Legislative Rule 158-9-2.2 For the purpose of this section a matter will be considered "personal" to a public official or public employee when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety.

WV Legislative Rule 158-9-2.3 For a public official's or public employee's recusal to be effective, it is necessary for the official or employee to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period, fully disclose his interest, and recuse himself from voting on the issue.

ADVISORY OPINION

No provision of the Ethics Act disqualifies the Trustee from serving on the Hospital's Board of Trustees, simply because she has a business association with a competing hospital and competes with the Hospital's OB-GYN clinic for patients in its primary coverage area. The Act does, however, limit her participation in the Board's work on matters which affect her private practice.

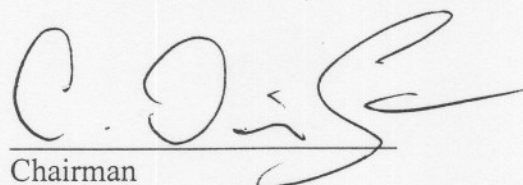
The Ethics Commission's legislative rules provide that public servants may not vote on or decide a matter that has become "personal" to them. The rules say that a matter will be considered "personal" to a public servant "... when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety."

The Commission finds that the Trustee's private medical practice gives her a sufficient financial interest in the activities of the Hospital's OB-GYN practice and clinic to require her recusal from official action relating thereto.

The Trustee should be excused from executive session discussions of nonpublic information concerning the Hospital's OB-GYN plans and activities and she should not take part in the Board's deliberation or vote on the following aspects of the Hospital's OB-GYN practice: (1) the nature of, and charges for, services, (2) the purchase of equipment and supplies and (3) staff recruitment, assignment, compensation and discipline.

The Trustee's position on the Board does not deny her the access to information available to the public generally. Nor does it deny her a voice in the public discussion before the Board of issues relating to the Hospital's OB-GYN practice. She may speak to the Board on such issues to the same extent as other members of the public, but she may not take part in the Board's deliberation or vote on them.

Finally, all members of the Board of Trustees should bear in mind that the improper disclosure of the Hospital's confidential information by any member would be a violation of the Ethics Act.


Chairman