

ADVISORY OPINION NO. 2000-27

Issued On October 5, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

COPY

OPINION SOUGHT

A **City Council Member** asks if he can vote on an issue in which he has an indirect interest either through his employer or the employer of his spouse.

FACTS RELIED UPON BY THE COMMISSION

A non-profit Foundation has an issue pending before a City Council which will require a vote. The City Council Member is an attorney engaged in private practice. The Member's law firm represents the Foundation generally, but does not represent the Foundation in this matter. The Member's law firm also represents another corporation which has an interest in the issue before Council. However, that corporation is not a party to the matter pending before City Council.

The Member's spouse is engaged in the private practice of law in a separate law firm. The spouse's law firm does not represent the Foundation, but her law firm has provided legal services to another company which the Foundation's President heads. (Neither the Member nor his spouse have personally represented the Foundation, the company which the Foundation's President heads, nor the separate corporation with an interest in the outcome of the vote.)

The Member seeks to determine if he can vote on the pending issue, given his indirect involvement with the Foundation, either through his law firm or his spouse's law firm.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-1-2(c) provides 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.

W. Va. Code § 6B-2-5(b)(1) provides 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.

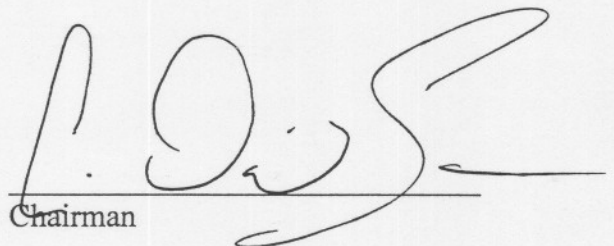
ADVISORY OPINION

In Advisory Opinion 98-02, the Commission addressed a similar situation involving a pending vote by a lawyer serving on a City Council. In that instance, the individual and his law firm had represented companies in which the President of a foundation with a matter pending before City Council was an officer. Applying an earlier Advisory Opinion governing voting, A.O. 91-38, the Commission concluded that it would not be a violation of the Ethics Act for the requester to vote.

Nonetheless, the Commission noted in A.O. 98-02 that W. Va. 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. The Commission further observed that 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. Accordingly, the Commission stated that the requester should recuse himself from any discussion or vote on that issue.

In the present situation, the Commission finds that the financial interest of the City Council Member resulting from his firm's representation of the Foundation in other matters and his firm's representation of a corporation with an interest in the matter, provide a basis to conclude that voting on the pending matter would be a violation of the Ethics Act.

In accordance with W. Va. Code § 6B-2-4, other persons subject to the Act who are similarly situated to the requester may rely in good faith on the guidance in this opinion as if they had requested the opinion themselves.


Chairman