

ADVISORY OPINION NO. 2000-32

Issued On November 2, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

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OPINION SOUGHT

A **City Council Member** asks whether it would be a violation for her to vote on a matter which affects a client of the law firm in which her spouse is a member.

FACTS RELIED UPON BY THE COMMISSION

A nonprofit Foundation and a Developer have petitioned the City to re-zone property owned by the Foundation. The Foundation is a client of the law firm of which her husband is a member. That firm also represents another corporation which has an interest in the issue before Council, although it is not a party to the matter before Council.

The spouse's firm is a large, well established firm providing general legal services to a sizable client base. The law firm is not representing either the Foundation or the Developer in the petition, but has a long standing relationship with the Foundation and has handled significant matters for it. The Developer's primary legal counsel is from outside the State, although the spouse's firm has handled a few relatively minor legal matters for the Developer in the past.

CODE PROVISIONS RELIED UPON BY 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.

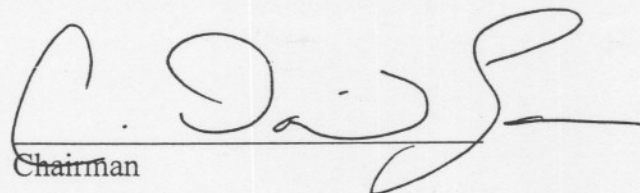
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This request deals with another facet of the situation the Commission dealt with in A.O. 2000-27 at its last meeting. In that opinion the Commission ruled that it would be a violation for a Member of the same City Council to vote in support of the interests of a Foundation which was a client of the law firm of which he was a member.

In that opinion the Commission said " 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."

Here the requester is a Council Member whose spouse is a member of that same law firm. She asks if it would be a violation for her to vote in support of the interests of the same Foundation in the same re-zoning matter.

The Commission has ruled in earlier decisions that public servants have a financial interest in the financial affairs of their spouse. That is the Commission's ruling here. Therefore the Commission finds that it would be a violation of the Ethics Act for the Member to vote in support of the re-zoning matter sought by the Foundation.


Chairman