

ADVISORY OPINION NO. 2002-05

Issued On March 7, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Registered Lobbyist** asks if it would be a violation for him to serve on the Citizens Legislative Compensation Commission.

FACTS RELIED UPON BY THE COMMISSION

The Requester is employed full-time as president of a trade association. He handles the association's Legislative and administrative lobbying and is the only person registered by the Ethics Commission to lobby for it. The majority of his time is spent on non-legislative matters, with less than a quarter of his time spent "working with the legislature, regulatory boards and various government agencies"

The Requester has been asked to serve on the Citizens Legislative Compensation Commission, whose seven members establish legislative compensation and expense allowances. He asks if his role as a registered lobbyist disqualifies him from serving.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Ethics Commission Legislative Rules on Voting 158-9-2 Personal

2.1 A public official or public employee may not vote on or decide a matter that has become "personal" to that individual.

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. An interest is not "personal" if the interest of the public official or public employee in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or class.

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.

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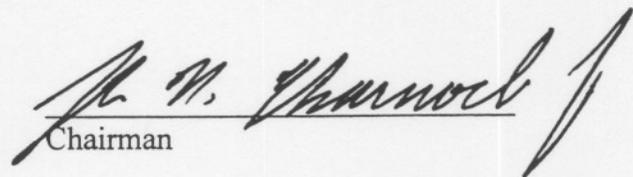
As a member of the Citizens Legislative Compensation Commission the Requester would be subject to the provisions of the Ethics Act. While no specific provision of the Act disqualifies registered lobbyists from serving on the boards of public agencies, the Commission's legislative rules on voting provide:

“A public official or public employee may not vote on or decide a matter that has become ‘personal’ to that individual ... [and] 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.”

The Commission finds that establishing legislative compensation is a matter which affects registered lobbyists in a manner which would influence their vote and would give the appearance of impropriety to their actions on such matters, regardless of their well intentioned and determined efforts to be objective.

The voting rule's proviso which permits persons to vote, if they are affected “as a member of, and to no greater extent than any other member of, a profession, occupation or class” does not apply to the Requester, as the only lobbyist on the Compensation Commission. Legislative reaction to his decisions, favorable or unfavorable, would affect him unlike any other lobbyist.

The Ethics Commission finds that the Requester should decline to serve on the Compensation Commission, since the Ethics Commission's Legislative rules on voting would prevent him from discussing or voting on the Commission's principal work and he could not fulfill the duties of his position.


Chairman