

ADVISORY OPINION NO. 2002-13

Issued On May 2, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **City Council Member** asks whether he may vote on a motion that he be appointed to serve as Mayor.

FACTS RELIED UPON BY THE COMMISSION

The City's Mayor has announced his resignation from office effective mid-May 2002. The ten members of City Council are responsible for appointing someone to serve as Mayor until the City's next regular election in May 2003. Any citizen of the City is eligible for appointment to the position. One of the Council Members asks if he could vote on his own nomination to serve as Mayor.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code §6B-1-2(c) provides 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 acting on a matter.

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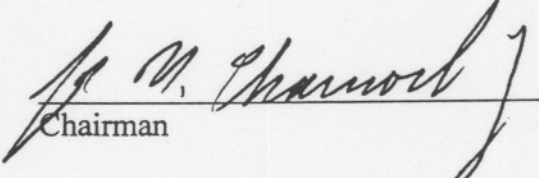
WV Code §6B-1-2(c) makes it clear that public officials should not take official action on matters which are personal to them, but should seek to be excused from voting, recused from deciding or acting on such matters.

This admonition is reflected in the Commission's legislative rules on voting, 158-9-2, which provide that a matter is 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 Ethics Commission has ruled on two occasions that a county solid waste authority board member could not vote on his own candidacy for the job of Authority Director, A.O. 90-170 and A.O. 91-16. The Commission ruled in A.O. 96-30 that a city council member could not vote on a motion that he be hired as the city's police chief. Each of these decisions was based on the Commission's legislative rules on voting, which require public servants to be recused from voting on matters in which they have a personal financial interest.

While this Opinion deals with filling a vacant public office, rather than hiring someone as an agency employee, it is a matter in which the Council Member has a personal financial interest, since the office of Mayor is a full-time paid position. Therefore, the Commission finds and rules that the Council Member should not vote as a member of Council on his own candidacy for the office of Mayor.

The Commission's ruling that the Council Member should not vote is consistent with WV Code 8-9-1 which provides in part: "No member of the governing body of any municipality shall vote upon any ordinance, order, measure, resolution or proposition, in which he may be interested other than as a citizen of such municipality."


Chairman