

ADVISORY OPINION NO. 2004-03

Issued On April 1, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Municipal Planning Commission Member asks if he may vote on a zoning request which involves an adjacent property owner.

FACTS RELIED UPON BY THE COMMISSION

The requester serves as an appointed member of the town's Planning Commission. A developer is seeking a zoning change on a tract of land that is adjacent to the requester's neighborhood and is contiguous to the requester's residence. The requester believes the requested zoning change will have a negative impact on the residential neighborhood where he lives.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

The WV Ethics Commission Legislative Rules on Voting, 158 C.S.R. 9, provide:

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.

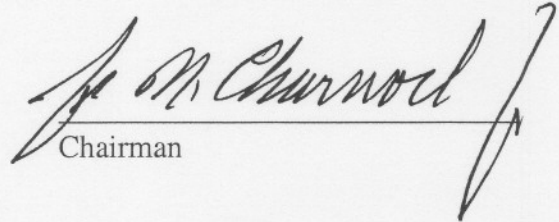
2.3 For a public official's or public employee's recusal to be effective, it is necessary for the official or employee to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period, fully disclose his interest, and recuse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

ADVISORY OPINION

The Ethics Commission's Legislative Rules generally prohibit public servants from voting on matters in which they have a direct or indirect financial interest. Those rules also contain a proviso

which allows them to vote, if they are affected by the matter only as a member of, and to no greater extent than any other member of, a profession, occupation or class.

As an adjacent property owner to the property being considered, the requester's financial interest in this matter is clearly significant, if not unique. Therefore, the Commission finds that the requester's interest in a proposed zoning change involving this property requires him to be recused from the Planning Commission's consideration of, and vote on, this particular matter.


Chairman