

ADVISORY OPINION NO. 2004-04

Issued On April 1, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commissioner** asks if he may vote on a county official's request to pay his attorney fees.

FACTS RELIED UPON BY THE COMMISSION

The County Commissioner signed a petition which sought to have an elected county official removed from office. In addition, the Commissioner appeared as a witness for the petitioners in the removal proceeding and one of the allegations in the removal petition concerned a matter in which the Commissioner was personally involved. The petition was ultimately denied and the county official has requested the County Commission pay his attorney fees.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

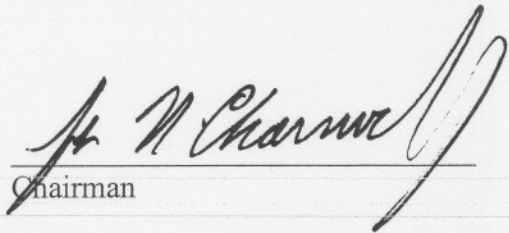
The WV Ethics Commission Legislative Rules on Voting, 158 C.S.R. 9, provide:

- 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 on voting say that public servants may not vote on matters which have become personal to them. These rules say that matters become 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."

In the specific situation presented by this request, the requester was one of the county citizens who signed the removal petition, he appeared as a witness at a hearing on the petition, and one of the allegations seeking removal of the county official was based on conduct in which he was personally involved. Therefore, in accordance with this Commission's Legislative Rule, the Commissioner should not vote on this matter.


Chairman