

## ADVISORY OPINION NO. 2005-07

Issued On May 5, 2005 By The

### WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

A person considering accepting an appointment to the **County Planning Commission** asks if his employees can appear before the Commission to represent his business interests.

#### FACTS RELIED UPON BY THE COMMISSION

The prospective County Planning Commission Member operates two businesses in the county. Business A is actively engaged in the development of residential building lots. Business B is engaged in the construction of residential and commercial buildings. Both businesses necessarily have significant interaction with the Planning Commission and its staff.

The requester recognizes if he accepts an appointment to the Planning Commission, he will not be permitted to personally contact the staff of the Planning Commission or appear before the Planning Commission in regard to any matter on behalf of either Business A or B. He further recognizes that he would not be permitted to participate in the vote or discussion on any permit, license or other matter involving either Business A or B.

The requester seeks to determine if he may nonetheless continue to pursue his business interests by limiting any contact between those businesses and the Planning Commission and its staff to his employees, agents and company officers.

#### CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(g) *Limitation on practice before a board, agency, commission or department*, provides in part:

No elected ... public official ... shall, during his or her public service ... or for a period of six months after the termination of his or her public service ... with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served ... in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed regulation;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.”

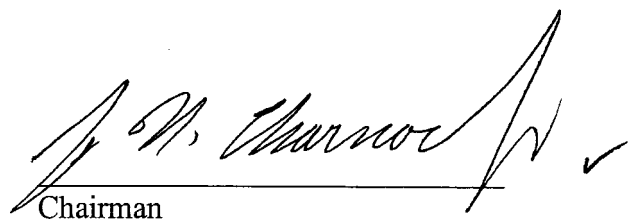
## ADVISORY OPINION

W. Va. Code § 6B-2-5(g) provides that a public official may not appear in a representative capacity before the governmental entity in which he serves in regard to matters involving administrative sanctions or actions, proposed regulations, the issuance of a license or permit, rate-making proceedings, and the expenditure of public funds. A business which is involved in residential and commercial construction or residential housing development must necessarily interact with the local Planning Commission on a variety of matters. The requester's business interests encompass both of these areas.

In Advisory Opinion 97-17, the Commission ruled that W. Va. Code § 6B-2-5(g) precluded employees of a business owned by a County Board of Health Member from representing the Member's business in meetings with the Board's staff or before the Board. In that opinion, the Commission determined that it was impossible to insulate the Board Member's interests from a matter involving a business he owned that is submitted to the Board or its staff through agents or employees of that business.

The Commission finds that the facts here involve substantially the same conflict of interest which was previously determined to be prohibited by the limitations in (g). Accordingly, if the requester elects to accept an appointment to the Planning Commission, he will be precluded from appearing before the Planning Commission regarding matters concerning his business activities, either personally and directly or indirectly through employees, company officers or other agents. In addition, this limitation continues to apply for six months after his departure from the Planning Commission. After July 1, 2005, in accordance with recent amendments to the Ethics Act, this post-separation limitation will apply for one year.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked.

  
Chairman