

ADVISORY OPINION NO. 2005-14

Issued On September 1, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commission** asks whether it can adopt a recusal policy that is more specific and restrictive than required by the Ethics Act.

FACTS RELIED UPON BY THE COMMISSION

The County Commission wishes to adopt a policy on voting and conflicts of interest. The proposed policy requires that for a public official's recusal from voting to be effective, the official must "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 that issue." In addition, the policy provides that any such recusal and full disclosure of the conflict will be published in the meeting minutes.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5 (b) provides in part that . . . a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

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.

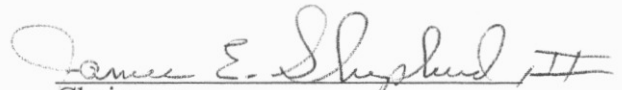
2.3 For a public official's or public employee's recusal to be effective, it is necessary for the official or employee to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period, fully disclose his interest, and recuse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

ADVISORY OPINION

The West Virginia Governmental Ethics Act sets certain **minimum** standards of conduct for public servants. Public agencies subject to the requirements of the Act are free to adopt additional standards of conduct that are more restrictive than the Act. Although a public agency is not authorized to permit conduct which the Ethics Act prohibits, there is no provision in the Ethics Act which restricts a public agency from adopting higher standards of conduct for itself or its personnel, whether elected, appointed or employed.

The proposed county policy is not inconsistent with the requirements of the Ethics Act. Therefore, adoption of the policy by the County Commission is permissible.

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