

## **Advisory Opinion 2020-07**

**Issued on April 2, 2020, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

A **City Council member** asks whether she may vote on the City's budget which contains a line item appropriation to her employer, a County Public Library.

### **Facts Relied Upon by the Commission**

The Requester is employed by the County Public Library ("County Library" or "Library") as an administrator. Her job title is Librarian Cataloger, and she performs work for the entire County Library system. The County Library system has six branches and 13 full-time employees.

The City where the Requester serves as a Council member is considering appropriating \$1,500 to the Library Branch located in the City to support community programs and to purchase supplies. The Requester states that the money would be deposited into the Library's general fund and earmarked for use by the Branch Library for the stated purposes.

The City Council must vote to approve its annual budget which includes a line item for the appropriation to the Branch Library.

### **Provisions Relied Upon by the Commission**

W. Va. Code § 6B-2-5(j) states, in relevant part:

(j) Limitations on voting. — (1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

....

(2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

.....

### **Advisory Opinion**

In Advisory Opinion 2013-47, the Ethics Commission held that town council members who were currently employed by a county board of education may vote on issues concerning property deeded to the board of education by the town. The Commission stated that “the Ethics Act does not prohibit a public official from voting on a matter in which his or her public employer has a financial interest.”

In Advisory Opinion 2014-23, the Ethics Commission held that county commissioners may vote on funding requests for specific projects made by the board of education by which they were employed. The Opinion cited Advisory Opinion 2014-02 in which the Ethics Commission held that a state board member who is employed by a municipality may vote on that municipality’s pilot program application because the state board member/municipal employee did not have a financial interest in the application.

In Advisory Opinion 2014-14, the Ethics Commission considered the voting restrictions on a council member who was employed by the city’s police department. The Commission held that the council member/police department employee “may not advocate on behalf of employees within the police department or deliberate and vote on matters specific to the police department unless there are five or more police department employee,” but “may vote on matters affecting the overall municipal budget.”

In the present case the City is considering appropriating \$1,500 to a Library Branch which the Library Branch will use for community programs and supplies. The County Library system has 13 full-time employees. The Ethics Commission finds that the City Council member does not have a financial interest which requires her recusal from voting on the budget that contains the appropriation for her Public Library employer because 1) it is an appropriation to a public agency and 2) she is affected as a member of, and to no greater extent than, any other member of a class of five or more Public Library employees.

**In conclusion, the Ethics Commission holds that the City Council member may vote on the City’s budget which contains a line item appropriation for the Public Library by which she is employed.**

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11 and does not purport to interpret other laws or rules.*

*In accordance with 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 or the law is changed.*

  
Robert J. Wolfe, Chairperson  
West Virginia Ethics Commission