

Advisory Opinion 2019-10

Issued on April 4, 2019, by

The West Virginia Ethics Commission

Opinion Sought

A **County Commissioner** asks whether she may participate in executive sessions when matters affecting the County Development Authority on which her son serves are discussed.

Facts Relied Upon by the Commission

The County Commission appoints members of the County Development Authority ("Development Authority"). The Requester's son serves on the Development Authority's Board of Directors, but the Requester recused herself from the discussion and vote on her son's appointment. The Development Authority Board members do not receive compensation for their service.

The County Commission at times must discuss and vote on matters affecting the Development Authority. The Requester states that she has been participating in executive sessions involving Development Authority matters, and that she has kept all executive session information confidential.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-1-3(f), states:

"Immediate family", with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren, and dependent parent or parents.

W. Va. Code § 68-2-5(b) states, in relevant part:

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....

W. Va. Code § 68-2-5U) states, in relevant part:

(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.

(C) The employment or working conditions of the public official's relative or person with whom the public official resides....

(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.

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

Advisory Opinion

Pursuant to the Ethics Act, public officials may not vote on or participate in a matter in which they have a "financial interest." W. Va. Code§ 68-2-50). For purposes of analyzing this restriction in the Act, the Commission must determine whether the Requester has a financial interest in the Development Authority arising from her son's service on its Board.

In Advisory Opinion 2014-02, the Ethics Commission held that state board members may vote on program applications submitted by the municipalities where they served or were employed. The Commission held that, pursuant to the plain language of the Ethics Act, the state board members did not have a financial interest in the applications submitted by their municipalities.

In Advisory Opinion 2014-25, the Ethics Commission held that a county economic development authority board chairperson could also serve as the chairperson of a public

service district in the same county. The Commission ruled that even if the county economic development authority and public service district seek funding from a common source, the board member could vote because he did not "have a financial interest in the funding or other contracts, and the financial interests of the PSD and EDA may not be imputed to him "

In Advisory Opinion 2013-47, the Ethics Commission held that town council members, who were either employed by the board of education or had a spouse employed by the board of education, could vote on deeding property to the board of education because they did not have a financial interest in the transaction.

The cited Advisory Opinions held that public officials may vote on matters affecting another government agency on which they served or were employed or by which their spouses were employed. In the instant situation, it is not the Requester, but her son, who serves on a government agency which has matters that come before the County Commission.¹ The Ethics Commission finds that neither the Requester nor her son receives a financial benefit when the County Commission acts on general matters affecting the Development Authority.

The Ethics Commission finds that the Requester may participate in executive sessions, discussions and votes involving general matters that affect the County Development Authority on which her son serves as a Board member. She may not, however, participate in matters which uniquely affect her son such as a disciplinary action against him.

The Ethics Commission reminds the County Commission that it must comply with the requirements of the Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1 through 6-9A-12, when it holds executive sessions.

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.

/s/ Robert J. Wolfe

Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

¹ The adult son is not an "immediate family" member for purposes of the Ethics Act, which further supports the conclusion that the Requester does not have a financial interest in his uncompensated service on a county board. W. Va. Code§ 6B-1-3(f).