

## **Advisory Opinion 2019-22**

**Issued on September 5, 2019, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

A **County Airport Authority member** asks whether she may vote on matters concerning her husband's employer.

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

The Requester serves on the Board of a County Airport Authority ("Authority"). Her husband is a part-time, seasonal employee of a large hotel ("Hotel") in the region. The Hotel is a tourist attraction in the state. The Requester states that tourism greatly impacts the regional economy.

The Requester asks whether she may vote on the creation of an Airport Convention and Visitors Bureau ("CVB"), which may increase hotel occupancy taxes.

The Requester states that the Airport Authority has partnered with three other entities, including the Hotel, to fund a marketing study for the purpose of increasing tourism in the region. The study has not been completed. She asks whether she may vote on implementing recommendations that the study may make. For example, the study may recommend that the entities launch a marketing campaign to promote local attractions, such as skiing facilities, rivers, trails, parks, the state fair, festivals, cultural events and resort destinations.

Finally, the Requester believes that the Hotel may be a subsidiary of a parent company that leases an aircraft hangar and purchases annual passes from the Authority to enter the airfield. The Requester further states that the Hotel itself does not have any leases or other contracts with the Airport Authority and does not purchase annual passes to enter the airfield. The Requester does not know whether the Hotel uses the hangar or airfield entrance passes. The Requester asks whether she may vote on matters concerning the lease with the parent company and the annual passes.

### **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 § 6B-2-5(j) 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.

(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.

...

### **Advisory Opinion**

The Ethics Act prohibits public officials from voting on matters 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 stock of any class. W. Va. Code § 6B-2-5(j)(1)(A). “Immediate family member” includes a spouse with whom the individual is living as husband and wife. W. Va. Code § 6B-1-3(f).

Based on the cited definitions and restrictions in the Act governing voting, if the Hotel has a financial interest in matters that come before the Airport Authority, then the Requester must recuse herself since her spouse is employed by the Hotel.

### **Airport Convention and Visitors Bureau**

The Requester asserts that the creation of a CVB may ultimately result in an increase in the hotel occupancy tax and that therefore the Hotel may have a financial interest in the matter. The Ethics Commission must determine whether the Hotel has such a financial interest in the creation of the CVB.

The Airport Authority's county currently imposes a three percent hotel occupancy tax<sup>1</sup> and already has one CVB. The state's hotel occupancy statute provides that a county commission may impose up to a six percent tax for the use or occupancy of a hotel room and must appropriate at least 50 percent of the net proceeds of the tax to the CVBs in the county.<sup>2</sup> While a county commission may elect to increase the tax rate to six percent, the creation of another CVB in a county would not require a county commission to raise the occupancy tax rate. A county commission alone has the discretion of whether to raise the occupancy tax regardless of the existence of one or more CVBs. W. Va. Code § 7-18-2(c).

In Advisory Opinion 2013-18, the Ethics Commission found that a county commissioner did not have a financial interest in an insurance firm of which he was a customer because any perceived interest, such as a rate decrease, was wholly speculative and too remote to be considered even an indirect financial interest. Therefore, the commissioner was not prohibited from voting on the selection of the county's insurance provider. In the instant situation, any financial effect on the Hotel resulting from a new CVB is likewise found to be speculative and remote.

**The Ethics Commission therefore holds that the Hotel's financial interest in the Airport Authority's potential vote to create a Convention and Visitors Bureau is too speculative to prohibit the Requester from voting.**

### **Joint Market Study**

The Airport Authority has partnered with three other entities, including the Hotel, to fund a marketing study for the purpose of increasing tourism in the region. The Requester asks whether she may vote on implementing recommendations that the study may make. For example, the study may recommend a marketing campaign to promote area attractions.

If the Airport Authority votes to fund a marketing campaign or activity which uniquely benefits the Hotel, then the Hotel would have a financial interest in the matter and the Requester may not vote due to her spouse's employment by the Hotel. Conversely, if the Airport's funding of a marketing campaign or activity impacts five or more similarly situated persons or businesses, then she may vote. The Ethics Commission has insufficient information to analyze whether the Hotel may have a financial interest in future Airport Authority decisions to fund, in whole or in part, initiatives recommended by the marketing study. If the Requester wants the Ethics Commission to further analyze this issue, she may provide additional information once the marketing study has been completed.

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<sup>1</sup> "The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room." W. Va. Code § 7-18-1.

<sup>2</sup> W. Va. Code § 7-18-2 and W. Va. Code 7-18-14.

## Financial Interests in Possible Parent Company

The Requester asks whether, given her husband's employment with the Hotel, she may vote on matters concerning the lease of Airport Authority hangar space and the issuance of airfield entrance passes to a company that is the Hotel's parent company.<sup>3</sup> To answer this question, the Ethics Commission must consider whether the Hotel, by virtue of its relationship with the parent company or use of the airport facilities, has a financial interest in the lease or airfield entrance passes.

The Requester has not provided facts to enable the Commission to determine the financial relationship between the companies. The Requester states that she does not know whether the parent company allows the Hotel to use the hangar space or airfield entrance passes in furtherance of the Hotel's business activities.

**The Ethics Commission finds that, if the Hotel uses the hangar space and passes for Hotel-related business, then the Hotel has a financial interest in the parent company's lease with the Airport Authority and the airfield passes and the Requester may not, therefore, vote on matters relating to the lease with or the issuance of airfield entrance passes to the parent company. Without more information about the financial relationship between the companies, the Ethics Commission cannot determine whether the Respondent is prohibited from voting due to this relationship.**

The Requester may vote on general matters which affect five or more similarly situated airport customers. For example, if the Airport Authority issues airfield entrance passes to five or more airport customers, then she may vote on a policy which affects the fees charged for the passes if the fee change affects five or more similarly situated persons or businesses.<sup>4</sup>

*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/ Lawrence J. Tweel

Lawrence J. Tweel, Acting Chairperson  
West Virginia Ethics Commission

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<sup>3</sup> The Requester states she believes the Hotel may be a subsidiary of the company which leases the aircraft hangar. For purposes of this Opinion, the Ethics Commission will assume that the Hotel is a subsidiary of that company.

<sup>4</sup> The Requester asserts that at least 10 other annual passes are typically sold.