

ADVISORY OPINION NO. 2003-04

Issued On February 6, 2003 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **City Council** asks whether the Mayor may be compensated for serving as temporary City Manager during Council's search for a permanent City Manager.

FACTS RELIED UPON BY THE COMMISSION

The City Manager is appointed by City Council to serve as the City's administrative chief and principal employing official. The position has been vacant since last July and Council asks if the Mayor may be compensated for serving temporarily, until Council secures a permanent replacement. If the Mayor were to serve temporarily, his compensation would not exceed the salary already budgeted for the City Manager's position for the current fiscal year.

The City's Mayor is elected from among Council's members and has no more authority than other members of Council, but serves as Council's presiding officer and the City's ceremonial representative.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Legislative Rules 158-9-2

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.

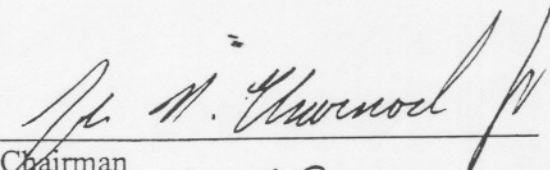
ADVISORY OPINION

No provision of the Ethics Act disqualifies a City's Mayor from serving temporarily as City Manager or prevents City Council from appointing the Mayor to serve temporarily as City Manager and compensating him for his work in that capacity.

However, the Ethics Commission's Legislative rules on voting say that public servants may not vote on matters which have become personal to them. These rules say that matters become personal to a public servant "... 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."

The Mayor has a clear financial interest in Council's action in considering his appointment as temporary City Manager, setting his compensation and the eventual hiring of a permanent City Manager. Therefore he should be recused from any discussion or vote by Council on those matters.

This opinion can not anticipate all the matters which may confront the Mayor, if he serves in both capacities. The City should be guided by the Commission's legislative rule on voting and, where the course is uncertain, contact the Commission's staff for guidance.


Chairman
2-6-03