

ADVISORY OPINION NO. 2002-16

Issued On August 1, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **City Council Member** asks whether he may discuss and vote on matters before Council which affect the public university by which he is employed.

FACTS RELIED UPON BY THE COMMISSION

The Council Member serves as chair of the City Council of which he is a member. He is a tenured professor employed by a State university. He asks whether he may discuss and vote on matters before Council which affect the university by which he is employed.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Ethics Commission Legislative Rules on Voting 158 C.S.R. 9

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.

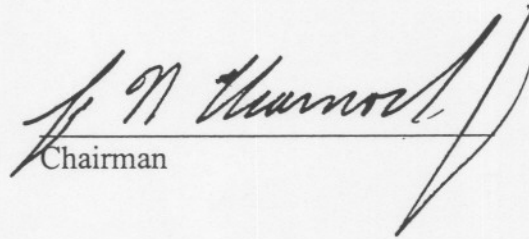
2.3 For a public official's or public employee's recusal to be effective, it is necessary for the official or employee to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period, fully disclose his interest, and recuse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

ADVISORY OPINION

The 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 Ethics Commission has consistently held that its Legislative rules prevent public servants from voting on matters which affect their employers, regardless of whether they are public or private employers, because their employment status may influence their votes. That is the Commission's ruling here. The Member should not vote on matters which affect the university.

The Commission notes that its rules do permit the Member to vote on matters which affect his employer, only as a member of, and to no greater extent than any other member of, a profession, occupation or class. He could, for example vote on matters which would affect the general business community, including the university. He may not, however, preside over, take part in the discussion of, or vote on a proposal that the City grant financial assistance to a University program or project, or other matters that uniquely affect his employer.


Chairman