

ADVISORY OPINION NO. 2000-22

Issued On October 5, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

COPY

OPINION SOUGHT

A **County Board of Zoning Appeals Member** asks if he can appear before the County Planning Commission in a representative capacity.

FACTS RELIED UPON BY THE COMMISSION

The Member is a licensed professional engineer and surveyor employed by an engineering company. He would like to appear before the County Planning Commission in the course of his work with the engineering company and asks if his position on the County Board of Zoning Appeals prevents him from doing so.

W. Va. Code § 8-24-55 authorizes a Board of Zoning Appeals to review certain matters that arise under various zoning ordinances. Decisions of the County Planning Commission are not reviewed by the Board of Zoning Appeals and the Member explains that the only correlation between these two separate agencies is that each receives staff support from the County Office of Planning and Infrastructure.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(g), *Limitation on practice before a board, agency, commission or department* provides in pertinent part: (1) No elected or appointed public official . . . shall, during his or her public service . . . or for a period of six months after the termination of his or her public service . . . with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served . . . in the following matters:


- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed regulation;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

W. Va. Code § 6B-2-5(g)(2) provides: "As used in this subsection 'represent' includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person"

ADVISORY OPINION

W. Va. Code § 6B-2-5(g) provides that a public official may not appear in a representative capacity before the governmental entity in which he serves in regard to matters involving administrative sanctions or actions, proposed regulations, the issuance of a license or permit, rate-making proceedings, and the expenditure of public funds.

The requester recognizes that he may not appear before the Board of Zoning Appeals in a representative capacity, and refrains from such activity. Moreover, the requester recuses himself from matters before the Board of Zoning Appeals which involve the engineering company by which he is employed. However, the Planning Commission is a separate governmental entity, and the Ethics Act does not prohibit the requester from appearing before that agency in a representative capacity.


Chairman