

**ADVISORY OPINION NO. 2000-17**

**Issued On August 3, 2000 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**OPINION SOUGHT**

**A County Board of Education Member** asks whether he may vote on two matters before the Board which affect him personally.

**FACTS RELIED UPON BY THE COMMISSION**

The Member owns rental property which he leases as a residence to a principal employed by the Board. The Member is responsible for dealing with personnel matters regarding all Board employees. He asks if he may take part in the discussion and vote on personnel matters affecting the principal who is his tenant.

The Member also owns property in a residential section of the town where a house owned by the federal government has been declared surplus and is available for conveyance to a public agency. The previous Board directed the staff to try to secure the property for student instructional use or office space. The Member believes that a zoning variance to permit this use would reduce the value of other properties, including his own, in this residential neighborhood. He asks if he may take part in the discussion and vote on the Board's plan to acquire the federal property.

**CODE PROVISIONS RELIED UPON BY COMMISSION**

Legislative Rules - 158-9-2.1 A public official or public employee may not vote on or decide a matter ... when he or she has any pecuniary interest either directly or indirectly in the matter ... [ but may, if their interest ]... in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or class.

**ADVISORY OPINION**

The Ethics Commission's legislative rules generally prohibit public servants from voting on matters in which they have a direct or indirect financial interest. However, those rules also contain a specific proviso which allows them to do so, if they are affected by the matter only as a member of, and to no greater extent than any other member of, a profession, occupation or class.

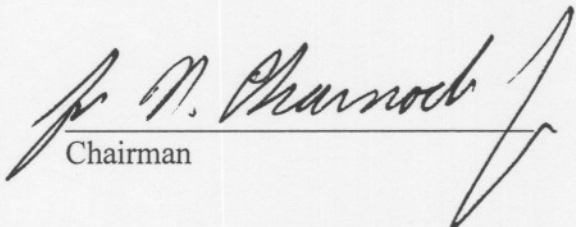
The rules of the House and Senate achieve the same result, e.g. public school teachers who serve in the Legislature are permitted to vote on a pay raise for public school teachers generally. Being affected only as members of the teaching profession, and to no greater extent than other teachers, they are permitted to vote on the legislation, even though it will benefit them financially.

The Board's acquisition of the federally owned property would affect the Member's financial interests, if at all, only as a member of a group comprised of the other property owners in the neighborhood. Accordingly, his interest does not require him to be recused from the Board's consideration of, and vote on, the matter.

The Member's financial interest in Board matters which affect his tenant is a different matter. If he has financial interests in such matters, he is affected as an individual and not as a member of a larger group. The group proviso which allowed the Member to discuss and vote on the Board's acquisition of the federal house does not apply to matters regarding his tenant.

Whether the Member must be recused from official action on personnel matters affecting his tenant will depend on the impact of the matter on the Member's financial interests. If the matter being dealt with could significantly impair the tenant's ability to pay his rent, the Member should not vote. However, the Member could not be said to have a financial interest in matters with no significant effect on the tenant's financial well being and he need not be recused from them.

The Ethics Commission can neither anticipate all the matters with which the Member may be confronted nor whether he would be considered to have a financial interest in them. Those matters which appear to fall outside the limits of this Advisory Opinion will have to be dealt with on a case by case basis, as they arise.

  
Chairman