

ADVISORY OPINION NO. 99-11

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WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A candidate for City Council asks whether his association with a volunteer fire department would prevent him from voting as a council member on matters affecting the fire department.

FACTS RELIED UPON BY THE COMMISSION

The requester is a candidate for City Council and also a trustee of the City's all volunteer fire department. The City contracts with the fire department to provide primary fire protection services. The fire department is compensated by the City for its services, but department members are all volunteers and receive no personal compensation.

The requester asks whether, if he were elected to City Council, he should abstain from voting on matters which involve the fire department or the City's contract with the department.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-1-2(c) provides in pertinent part that... The Legislature finds that the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

Legislative Rule 158-9-2 Personal

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.

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The Ethics Act states that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter. However, the Legislature provided that public servants should seek to be excused from voting, recused from deciding, or otherwise relieved from taking official action on a matter, if the matter is "personal" to the public servant.

The Ethics Commission's legislative rules states that "... 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."

This legislative rule contains a proviso which says that "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." Both the WV Senate and House of Delegates have similar provisions in their rules. As applied in the Legislature, those provisions permit, in fact require, public school teachers who serve in the Legislature to vote on legislation which affects the pay and benefits of public school teachers generally.

The proviso to the Ethics Commission's legislative rule means that public servants may not be excused from their responsibility to vote on matters which affect them only as members of, and to no greater extent than other members of, a profession, occupation or group.

If the requester were elected to serve on City Council, his position with the fire department would not prevent him from voting on matters affecting the department, so long as his interest in those matters affected him only as a member of the department, and to no greater extent than any other department member. It would not be a violation of the Ethics Act for him to vote on such matters.

The Commission notes, however, that if the requester were to have a personal financial interest in the financial viability of the volunteer fire department, then he should not vote on any aspect of the City's contract with the department which would affect the department's financial condition. For example, he should not vote on the City's contract with the department, if he had assumed personal financial responsibility for some or all of the fire department's debt.



Chairman