

ADVISORY OPINION NO. #93-02

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 4, 1993

GOVERNMENTAL BODY SEEKING OPINION

A State Legislator

OPINION SOUGHT

Is it a violation of the Ethics Act for a State Legislator to serve on a Committee which examines potential legislation which pertains to issues which may be directly associated with his private business interests?

FACTS RELIED UPON BY THE COMMISSION

The Legislator serves on a committee which examines potential legislation which pertains to issues which may be directly associated with the Legislator's private business interests.

PERTINENT STATUTORY PROVISIONS AND LEGISLATIVE RULES RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

Legislative Rule §158-9-2.1 provides that a public official may not vote on or decide a matter that has become "personal" to that individual.

Legislative Rule §158-9-2.2 provides that for the purpose of this section a matter will be considered "personal" to a public official when he has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his vote or would clearly give the appearance of impropriety. An interest is not "personal" if the interests of the public official in the matter are affected as a member of, and to no greater extent than any other member of a profession, occupation or class.

Legislative Rule §158-9-2.4 provides that in any case where a Legislator is voting as part of their official duties of office, the members of the Senate and the members of the House of Delegates are governed by the rules of their respective houses.

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The Ethics Act states that conflicts of interest are inherent in part-time public service, but that such conflicts are not always sufficient to disqualify a public servant from taking official action. The Act provides that where a conflict becomes "personal" to a particular public servant, he or she 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.

The Commission's Legislative Rule on Voting, section 158-9-2.2 provides that a conflict is not "personal" to the public servant, if his or her interests **are affected only as a member of, and to no greater extent than any other member of, a profession, occupation, or class.** Such conflicts are not considered "personal" and are insufficient to disqualify an official from acting. This Rule mirrors the rules of the respective legislative houses on voting.

House Rule 49 considers an interest to be sufficient to disqualify the member's vote if it is "a direct personal or pecuniary interest ... such as affects the member directly and **not as one of a class.**" Senate Rule 43 requires the member to vote "...unless he or she is immediately and particularly interested therein, meaning an interest that affects the member directly and **not as one of a class ...**"

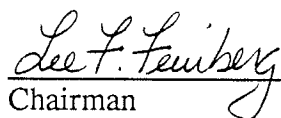
It is not, for example, a violation of the Ethics Act for a physician or health care provider to vote on health care legislation, or for a teacher to vote on matters affecting education, or for a coal miner to vote on laws regulating the coal industry. Even though each of these Legislators might derive some personal financial benefit from such legislation, their official action is not improper so long as they benefit to no greater extent than any other member of the profession, occupation, or class affected.

VOTING

It would not be a violation for the Legislator to vote on laws which have an effect on his financial interests - so long as those interests are effected only as a member of, and to no greater extent than any other member of, a profession, occupation, or class.

PRIVATE GAIN

It would not be a violation of the Act's prohibition against the use of office for private gain for the Legislator to serve on a Legislative committee which considers proposed laws which affect his private business. Nor would it be a violation for him to use his committee position to promote, advocate or influence legislation simply because it benefited private business interests of a class of which he was a part. It would, however, be a violation for him to use his committee position to influence legislation which would uniquely benefit his private company - legislation designed to benefit only his particular business interest to the exclusion of others of that class.


Chairman