

**ADVISORY OPINION NO. 92-26**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON AUGUST 6, 1992**

**GOVERNMENTAL BODY SEEKING OPINION**

A City Council Member

**OPINION SOUGHT**

Is it a violation of the Ethics Act for a City Council Member to also serve as the city building inspector?

**FACTS RELIED UPON BY THE COMMISSION**

The requestor is an elected member of a City Council, which is a part-time position. While continuing to serve as a Council Member, he was appointed by the Mayor, with the approval of a majority of the other members of Council, to serve as the town building inspector. The requestor did not vote on his appointment.

The duties of the building inspector consist of approving or denying building permits and determining that building projects within the City limits comply with the City building code. As the city building inspector, the requestor is paid \$6.50 per hour for a maximum of two hours per week.

The requestor is well qualified for this position since he is a retired general contractor. The requestor has stated that he is no longer active in any construction project and does not conduct business with the City. Further, he does not have an interest in any supplier of goods or services for the City.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain or that of another person.

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected...public official...may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he...may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

West Virginia Code §6B-1-2(c) states in pertinent part 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 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.

### **ADVISORY OPINION**

In considering this request the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would per se prohibit a City Council Member from being employed as the city's building inspector.

#### **Private Gain**

However, the Commission reminds the requestor that pursuant to WV Code §6B-2-5(b)(1), a public official may not use his office or the resulting prestige for his own private gain. Therefore, he may not use his position or influence as a City Council Member to obtain or retain a public employment position.

#### **Voting**

WV Code §6B-1-2(c) provides that in part-time public service certain conflicts of interest are inherent and when such conflict becomes personal to a particular public official, 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.

A public official is not permitted to vote or decide on a matter that has become "personal" to that official. The Commission considers a matter to be "personal" when the public official has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote, or would give the appearance of impropriety.

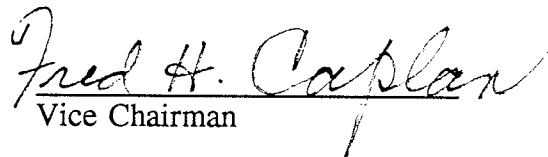
Obviously, a City Council's employment decision when a City Council member is a candidate for the position would be personal to that member and requires his recusal. For a public official's recusal to be effective, it is necessary for the official to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period.

It would not be a violation of WV Code §6B-2-5(b)(1) for the City Council Member to accept the appointment as the city building inspector since he followed the steps outlined above.

### **Public Contract**

Pursuant to WV Code §6B-2-5(d)(1) a public official may not have more than a limited interest in the profits or benefits of a public contract over which he may have direct authority or control. As a City Council Member he has direct authority and control over the City's employment contracts. Further, as a potential candidate for the employment position, the requestor would have more than a limited interest in the profits or benefits of such contract.

However, WV Code §6B-2-5(d)(1) also provides that nothing contained within this section shall prohibit the employment of any person with any governmental body. Therefore, it is not a violation of WV Code §6B-2-5(d)(1) for a City Council Member to also serve as the city building inspector.

  
Vice Chairman