

**ADVISORY OPINION NO. 91-18**  
**ISSUED BY THE**  
**WEST VIRGINIA ETHICS COMMISSION**  
**ON APRIL 4, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

Administrator of a City Hospital

**OPINION SOUGHT**

- a. Whether it is a violation of the Ethics Act for employees of a City Hospital to vote on wage adjustments for employees other than themselves?
- b. Whether it is a violation of the Ethics Act for employees of a City Hospital to vote on wage adjustments for subordinate employees?
- c. Whether it is a violation of the Ethics Act for employees of a City Hospital to vote on capitol equipment purchases within their department as well as in other areas of the Hospital?
- d. Whether it is a violation of the Ethics Act for City Hospital employees to vote on physician privileges in their area of responsibility or any other area of the hospital?
- e. Whether it is a violation of the Ethics Act for employees of a City Hospital to vote on the Hospital's operating budget?

**FACTS RELIED UPON BY THE COMMISSION**

The current President of the Medical Staff at the City Hospital is also the Medical Director of the Hospital Emergency Department. This individual is a full-time employee of the hospital. In addition to the Medical Director of the Emergency Department, the City Hospital also employs four additional physicians.

An affiliated Clinic is also owned by the City. The Board of Trustees of the Clinic, which is known as the Outpatient Center, has identical membership to the City Hospital's Board.

### PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Subsection 6B-1-2(c) states in pertinent part that...certain conflicts of interest are inherent in public service and do not, in every instance, disqualify a public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular 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.

West Virginia Code Section 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.

### ADVISORY OPINION

First, the Commission would note that pursuant to subsection 6B-1-2(c) of the Ethics Act, a public official or employee 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 that has become "personal to him".

The questions outlined by the requestor can be answered by simply defining the word "personal" as it is used in the Ethics Act. The Commission considers a matter to be "personal" when the public official or employee 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.

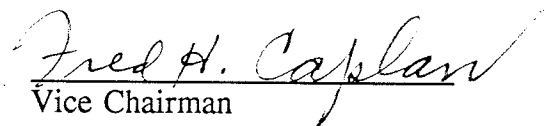
The Ethics Commission has previously determined that in order for the public employee's recusal to be effective, the public employee must physically remove himself from the room during the discussion and voting process.

The answer to every question asked will depend on the specific facts and circumstances in attendance to it, but in order to give some guidance and direction the Commission has generally answered the requestor's concerns:

- a. Employees of a City Hospital voting on wage adjustments for persons other than themselves would generally not be considered voting on a "personal matter" as defined by the Ethics Commission.
- b. As stated above, the Commission does not generally consider voting on wage adjustments for subordinate employees by City Hospital staff members to be a "personal matter".

- c. The Commission has determined that if City Hospital employees vote on capitol equipment purchases within their department, it could give rise to the appearance of impropriety if the employees are pecuniarily affected either directly or indirectly by the outcome of the vote.
- d. The Commission has determined that if City Hospital employees vote on physician privileges in their area of responsibility, it could give rise to the appearance of impropriety if the employees are pecuniarily affected either directly or indirectly by the outcome of the vote.
- e. The Commission has determined that if employees of a City Hospital vote on the Hospital's operating budget it could give the appearance of impropriety if the employees are pecuniarily affected either directly or indirectly by the result of the vote.

The Commission would also note and remind the requestor that pursuant to subsection 6B-2-5(b)(1) of the Ethics Act, a public official or a public employee may not knowingly and intentionally use his office or prestige for his own private gain or for the gain of another individual. 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.

  
Vice Chairman