

**ADVISORY OPINION NO. 91-21**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON APRIL 4, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

A City Council's Attorney

**OPINION SOUGHT**

- a. Whether it is a violation of the Ethics Act for City employees to seek election to various City offices?
- b. Whether it is a violation of the Ethics Act for City employees, who are elected to public offices, to continue their full-time employment with the City?

**FACTS RELIED UPON BY THE COMMISSION**

The City has a City Manager form of government, with the City Manager being hired by the City Council. The City Council is an eight member, nonpartisan group elected by wards.

The requestor states that the position of Mayor is primarily ceremonial in nature except that he serves to break all tie votes of the City Council.

Although the City employees work in various departments, they are under the ultimate control of the City Manager. With the exception of the Police Department, City employees are not covered by the Civil Service provisions.

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

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.

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

The Commission would note that this opinion is limited to a review of the Ethics Act. It does not address or review the propriety of such action in light of any other State or local regulations. Anyone relying on this opinion should review these regulations prior to registering as a candidate.

In considering this request, the Ethics Commission has analyzed the facts presented and the pertinent statutory violations established by the Ethics Act and it is their opinion that there is nothing contained within the Ethics Act which would prohibit a City employee from being a candidate for City Council, mayor or any other elected City office. Further, there is nothing contained within the Ethics Act which would prohibit City employees, if elected to public office, from continuing their full-time employment with the City.

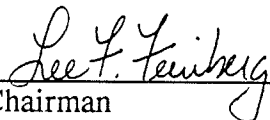
#### **Voting**

However, subsection 6B-1-2(c) of the Ethics Act provides that a part-time elected official 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".

A public official is not permitted to vote on or decide a matter that has become "personal" to that individual. 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, by way of example, when the elected official considers a pay raise for his public employment position that would be personal and would require the public official's recusal. For a public official's recusal to be effective, it is necessary that he excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period.

Therefore in summary, it would not be a violation of the Ethics Act for City employees to seek election to various City offices or to continue their full-time employment with the City, if elected as long as they do not vote on any matter that is personal to them.

  
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Chairman