

ADVISORY OPINION NO. #91-35

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 2, 1991

GOVERNMENTAL BODY SEEKING OPINION

An Attorney on behalf of a City

OPINION SOUGHT

- a. Whether a Council member should vote regarding disciplinary action against a police officer when the Council members's nephew is employed by the City Police Department?
- b. Whether a Council member should vote regarding disciplinary action against a police officer when the Council member's wife is a dispatcher for the City Police Department?
- c. Whether a Council member should vote regarding disciplinary action against a police officer when the Council member is a part-time City police officer?
- d. Whether a Council member should vote regarding disciplinary action against a police officer when the Council member is a "back-up" police officer for the City?
- e. Whether a Council member should vote regarding disciplinary action against a police officer when the Council member's spouse is the Chief of Police in a nearby City?

OTHER FACTS RELIED UPON BY THE COMMISSION

At a recent City Council meeting, a conflict of interest issue arose regarding whether certain City Council members could vote regarding disciplinary action against certain police officials. The relationships questioned are outlined above in questions a. through e.

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.

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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.

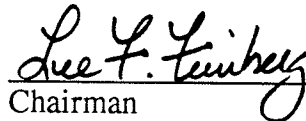
The answer to every question raised will depend on the specific facts and circumstances attendant to it, but in order to give some guidance and direction the Commission has generally answered the requestor's concerns:

- a. The Ethics Commission does not consider it "personal" for a member of the City Council to vote regarding disciplinary action against a police officer when his nephew is employed by the City Police Department. The Commission assumes in its answer that the City Council member's nephew is not the subject of the disciplinary action.

- b. The Ethics Commission does not consider it "personal" for a member of the City Council to vote regarding disciplinary action against a police officer when his wife is a dispatcher for the City Police Department. The Commission assumes in its answer that the City Council member's wife is not the subject of the disciplinary action.
- c. The Commission does not consider it "personal" for a Council member who is also a part-time police officer for the City to participate in a vote regarding disciplinary action against a fellow police officer.
- d. As stated above, the Commission does not consider it "personal" for a Council member who is a "back-up" police officer for the City to participate in a vote regarding disciplinary action against a fellow police officer.
- e. A Council member who participates in a vote regarding disciplinary action against a police officer when the Council member's spouse is the Chief of Police in a nearby City would generally not be considered a "personal matter" as defined by the Ethics Commission.

Private Gain

Subsection 6B-2-5(b)(1) of the Ethics Act prohibits a public official from using his office or prestige for his own private gain or for the private gain of another. An example of this would be using the ability to vote on such issues or using his influence with the other City Council members to benefit a relative or close friend.


Chairman