

**ADVISORY OPINION NO. #91-65**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON OCTOBER 3, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

A City Attorney

**OPINION SOUGHT**

Whether it is a violation of the Ethics Act for the Mayor or members of a City Council to vote to donate City funds to an Association of which they are members?

**FACTS RELIED UPON BY THE COMMISSION**

A Professional Baseball Association is a nonprofit corporation created to raise funds to help build a baseball stadium. As part of the fund raising program, the Association has offered memberships in the Association for \$100. Such memberships entitle the members to a single vote on Association matters. Members are not compensated for participation in the Association. The Mayor and certain members of the City Council would like to join the Association.

The baseball stadium and surrounding property will be owned by the City. After completion the stadium will be leased to either the Professional Baseball Association or to a third party.

The City has been approached to donate money to the Association and has also considered committing \$300,000 to \$400,000 in force account labor to the project.

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

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

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. 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.

### ADVISORY OPINION

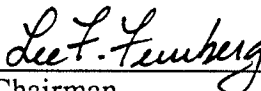
Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act a public official may not use his or her office for private gain. However, the Commission does not believe that if Council members, who are also members of an Association, vote to donate City money and force account labor to the Association that it would create an opportunity for private gain. As members of the Association, the City Council members would not have a substantial personal pecuniary interest in the Association or the proposed baseball stadium since such memberships merely entitle the members to a single vote on Association matters and members do not receive any form of compensation for participation in the Association.

Further, subsection 6B-2-5(b)(1) also provides that the performance of duties associated with the office for the advancement of public policy goals, without compensation, does not constitute the use of prestige of office for private gain. The Commission assumes that the construction of a baseball stadium which would be owned by the City and leased to a third party for the purpose of recreation and increased income for the City would constitute an advancement of public goals.

Therefore, it would not be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for the Mayor or members of a City Council to vote to donate City funds to an Association of which they are members.

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". 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. The Commission has determined that in order for a public official's recusal to be effective he must physically remove himself from the room during the discussion and decision making process.

However, if Council members, who are also members of an Association, participate in a vote to donate money and commit \$300,000 to \$400,000 in force account labor to the Association it would not generally be considered a "personal matter" as defined by the Ethics Commission. Therefore, it is not necessary for a City Council member who is also a member of the Association to recuse himself from voting in his capacity as a public official, on issues relating to the Association and proposed baseball stadium.

  
Chairman