

ADVISORY OPINION NO. 90-47

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON APRIL 5, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Mayor of a Town

OPINION SOUGHT

1. Whether it was a violation of the Act for two public officials to vote in March 1989 on salary increases for themselves?
2. Whether the Act requires a salary increase that may have been implemented illegally to be refunded to the Town?
3. Whether the Act requires legal action to be taken against the two public officials?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor believes he may have discovered an irregularity in the passage of salary increases for the former Mayor and the Recorder of this town. The Mayor and the Recorder are the only paid elected officials in the town. No other elected officials receive any payment to serve.

At a meeting held in March 1989 the former Mayor discussed the budget with the public and town council. Two councilmen voted against raises for the former Mayor and the Recorder. Two other councilmen voted for the pay raises. The Recorder broke the tie.

Although the minutes do not say that the Recorder broke the tie for the salary increases, it was understood by the councilmen present at the meeting that he had voted for the salary increases, and the increases would and did take effect July 1, 1989.

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 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...

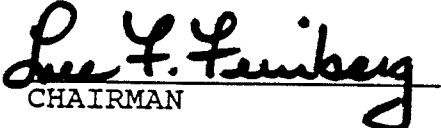
West Virginia Code Section 6B-2-4(w) states in pertinent part that...the provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine...

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

It is the Commission's opinion that it is without authority to render a decision on this matter since the acts complained of occurred prior to September 30, 1989.

However, the Commission would advise the requestor that he may seek an opinion on this matter from the Attorney General's office.

  
CHAIRMAN