

ADVISORY OPINION NO. 89-116

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 1, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Chairman of a City Council Committee

OPINION SOUGHT

1. Whether a City can choose to exempt itself from section 6B-2-4 of the Act?
2. Whether a public official may avoid violating 5(d)(1) of the Act when he abstains from voting on a particular conflict of interest matter?
3. Whether a public official is required by West Virginia Code 6B-2-7(3) to identify on the financial disclosure statement the names and addresses of every source of income received by him over \$5,000?
4. Whether a City public employee is required to file a financial disclosure statement if the City opts by ordinance to be covered by the disclosure provisions of the Act?

OTHER FACTS RELIED UPON BY THE COMMISSION

A City Council Committee has requested an advisory opinion on a number of issues which are of interest to the City and the City Council members.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

Financial Disclosure

West Virginia Code 6B-2-5(a) states in pertinent part that... the provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

West Virginia Code 6B-2-6(a) states in pertinent part that...the requirements for filing a financial disclosure statement shall become initially effective on the first day of February, one thousand nine hundred ninety, for all persons holding public office or employment on that date and who are otherwise required to file

such statement under the provisions of this section...

West Virginia Code 6B-2-7(3) states in pertinent part that...the identification, by category, of every source of income over five thousand dollars received during the preceding calendar year, in his or her own name or by any other person for his or her use or benefit, by the person filing the statement, and a brief description of the nature of the services for which the income was received. This subdivision does not require a person filing the statement who derives income from a business, profession or occupation to disclose the individual sources and items of income that constitute the gross income of that business, profession or occupation.

Public Contracts

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority or with which he or she is employed...

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.

West Virginia Code 6B-2-5(d)(3) states in pertinent part that... where the provisions of subdivision (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption...

Excused From Voting

West Virginia Code 6B-2-5(i) states in pertinent part that...members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

ADVISORY OPINION

1. Subsection 6B-2-6 of the Act requires certain public officials and employees to file financial disclosure statements with the Ethics Commission. However, municipalities have the option to decide by ordinance whether to be covered by the financial disclosure provisions.

The City asks if it can exempt itself from another subsection, 6B-2-4 and its provisions and other parts of the Act. The City is concerned with what it characterizes as the lengthy and burdensome procedural requirements set forth in this section, involving investigative panels, hearing boards and judicial reviews.

However, the Commission would note that there is no burden on the City or any other governmental entity in this process. The selection and operation of an investigative panel, hearing panel and complaint process are the responsibility of the Ethics Commission.

Therefore, in response to the question posed, a municipality, its officials and employees do not have an option and are automatically covered under section 6B-2-4 of the Act.

Moreover, subsection 6B-2-5(a) specifically states that municipal employees and officials are covered by the Act.

2. Subsection 5(d)(1) does not automatically prohibit an individual from serving on the City Council if this person or a member of his immediate family or business with which he is associated is a party to or has an interest in the profits or benefits of a contract with the City if this interest exceeds 10% or \$30,000.

The Commission would note that subsection 5(d)(3) allows the City, as the affected governmental body to file with the Ethics Commission a written request for an exemption if it can show one of the following would result if subsection (d)(1) were to be enforced: undue hardship, substantial interference, excessive cost or a loss of quorum.

The City asks whether members who recuse themselves from voting on a matter that is personal to them would still be in violation of 5(d)(1). It is the Commission's opinion under the present statute they would be in violation of the 5(d)(1) provision although they recused themselves from voting.

The City also asks whether 6B-2-5(i) permits a City Council Member to exempt himself from the prohibitions in the interest in public contract section if he abstains from a particular vote as applies to State Legislators.

It is the Commission's opinion that 6B-2-5(i) applies only to members of the Legislature and is not available to City Council Members.

However, the Commission would note that West Virginia Code section 6B-2-8(b) (financial disclosure statement provision) states that subsection 5(d)(1) does not apply to holdings which are assets within a qualified blind trust.

3. Subsection 6B-2-7(3) provides that every source of income over \$5,000 must be identified by category, that is received by the individual in his (or her) name or by any other person for his (or her) use or benefit by the person filing the statement accompanied by a brief description of the nature of the services for which the income was received. However, the person filing the statement is not required to disclose individual sources and items of income that constitute the gross income of a business, profession or occupation.

The Commission has previously determined that a spouse's income from regular employment does not need to be disclosed by the individual filing the statement.

The Council Members ask if an individual earns more than \$5,000 in dividend income in a year whether he is required to disclose the names of each company from which the Council Member earned it. It is the Commission's opinion that the Act requires an individual to disclose the source of income (over \$5,000) and a brief description of the nature of the services for which the income was received, for example:

Source: XYZ Corporation
Service Performed: Dividends or,

Source: Friendly National Bank
Service Performed: Interest on Savings Account or,

Source: John Jones Trust
Service Performed: Trust Income

Although, an individual is required to disclose each source of income, he or she is not required to disclose any dollar amounts. The only requirement for disclosure is that the total income received from that category must be over \$5,000.

Furthermore, regarding income derived from a business, profession or occupation, the individual should name only the source of income, such as the name of the business and not individual accounts, clients or customers of the business or profession. Attorneys, doctors and psychologists should list each practice separately but need not disclose the names of their clients or patients, for example:

Source: Smith and Jones Law Firm
Service Performed: Private Law Practice or,

Source: ABC Medical Clinic
Service Performed: Private Medical practice

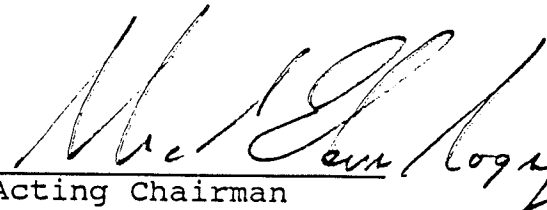
Source: Quick Sale Realty
Service Performed: Real Estate Sales

4. The City Council asks if a City opts to be covered by the disclosure provision, whether City employees are required to file a financial disclosure statement.

Subsection 6B-2-6 requires persons holding public office or employment on February 1, 1990 and who are otherwise required to file such statement under the provisions of the Act to file a financial disclosure statement. This includes only "elected" municipal officials and municipal candidates for election.

Therefore, it is the Commission's opinion that municipal employees in Cities that have opted to be covered by the disclosure provision would not need to file a financial disclosure statement.

Additionally however, subsection 6B-2-5(a) states that municipal employees and officials are covered by the Act in all other respects.


Acting Chairman

Michael Edward Nogay
2-1-90