ADVISORY OPINION NO. 2013-32

Issued on July 11, 2013 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A newly elected **Town Councilperson** asks if he may vote on issues related to the local branch of a charity when his father is Vice Chairperson of the charity.

FACTS RELIED UPON BY THE COMMISSION

The father of a newly elected Town Councilperson is set to become Vice Chairperson of a local branch of an international non-profit charitable organization. The local branch seeks approval from Town Council when constructing homes within the town in accordance with its mission. The Vice Chairperson is unpaid, but does receive free room at the quarterly meetings, usually at a local bed and breakfast or local resort.

CODE PROVISIONS AND LEGISLATIVE RULE RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-1-3:

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> (b) "Business" means any entity through which business **for-profit** is conducted including a corporation, partnership, proprietorship, franchise, association, organization or self-employed individual. (emphasis supplied)
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> (f) "Immediate family", with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren and dependent parent or parents.

W. Va. Code§ 6B-2-5(b)(1):

> A public official ... 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.

W. Va. Code . 6B-2-50) reads in relevant part:

(1) Public officials... may not vote on a matter:

(A) In which they... or a business with which they [or] an immediate family member... [are] associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

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(D) The appropriations of public moneys or the awarding of a contract to a non-profit corporation if the public official or an immediate family member is employed by the non-profit.

ADVISORY OPINION

The Ethics Act sets forth specific rules regarding when elected and appointed public servants may vote. The overriding purpose of the voting provision is to ensure that a public official does not vote or take action on a matter in which he or she has a financial interest. In Advisory Opinion 2009-06, the Commission was asked whether a City Council member may vote on a matter or otherwise take action to benefit a church where he is a member; additionally, his father served on the church council. Noting that neither the Council member nor his father had a financial interest in the church or property, the Commission ruled that the Ethics Act does **not** prohibit him from voting or taking action on matters which affect the church.

In Advisory Opinion 2011-12 held that public officials who are uncompensated board members of a non-profit organization are not required to recuse themselves on any matters related to any contract or other transaction between the governing body and the non-profit organization because a non-profit does not fall within the definition of "business" as defined by the Ethics Act.

Since the Requester's father is not an employee of the non-profit, the same analysis in Advisory Opinions 2011-12 and 2009-06 applies to the present situation. The Commission hereby finds that the Town Councilperson may vote on matters relating to the local branch of the non-profit organization even though his father will be its Vice Chairperson.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code§ 6B-1-1, *et seq.,* and does not purport to interpret other laws or rules. In accordance with W. Va. Code§ 68-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

/s/ Jonathan E. Turak
Jonathan E. Turak, Acting Chairperson