

Advisory Opinion 2026-05

Issued on June 4, 2026, by

The West Virginia Ethics Commission

Opinion Sought

A **County Planning Commissioner** who leases property to a solar developer for a proposed utility scale solar project asks whether he can serve on the commission's solar subcommittee, participate in and vote on matters associated with amending the county's zoning ordinance, and vote on rezoning applications.

Facts Relied Upon by the Commission

The Planning Commission anticipates a utility scale solar developer will submit an application for a wholesale renewable energy production facility. The solar developer has leased 2,356 acres¹ of private property for the project from eight property owners. The eight property owners have entered into eleven lease agreements with the developer for the project land, the details of which are provided below.

The County's current zoning ordinance permits wholesale renewable energy production facilities, such as solar panels, only in industrial zones. The Planning Commission is considering zoning amendments to address renewable energy production of all sizes and types in all zones. The Planning Commission consists of 12 members who are appointed by the County Commission. To draft the proposed zoning changes, the Planning Commission established a zoning subcommittee. This subcommittee is

¹ The acres in this opinion have been rounded to the nearest whole number.

responsible for recommending ordinance revisions to the Planning Commission, which subsequently require approval from the County Commission.

The Requester provided the “Memorandum of Solar and Energy Lease Agreement” from each of the eleven (11) leases, which were recorded in the County Clerk’s Office. The Memorandums were executed and recorded in 2021 through 2022. The term of each Memorandum is up to 50 years at the developer’s option.²

The Requester and two of his siblings hold six (6) of these leases. These six (6) leases are broken down as follows:

The Requester, and he and his wife through an LLC, hold two (2) of these leases, which include 310 and 167 acres.

The Requester is a co-lessor with Sibling 1 of land in two (2) of the leases. This co-ownership with Sibling 1 comprises 96 and 56 acres, totalling 152 acres.

Sibling 1 is leasing 330 acres to the developer for the solar project.

Sibling 2 is leasing 101 acres through his corporation.

Furthermore, the solar developer has entered into lease agreements with five (5) other lessors. These individuals and businesses have no family ties or financial connections to the Requester. The sizes of their land holdings under lease are 47, 102, 357, 438, and 518 acres, respectively.

Provisions Relied Upon by the Commission

[W. Va. Code § 6B-1-2\(c\)](#) provides, in relevant part:

² The Commission has not been given access to the actual lease documents. The Requester maintains that these agreements and the specific rental rates are confidential, and that he does not know the per-acre compensation received by the other lessors, but believes the leases are most likely identical in material terms.

The Legislature finds that the state government and its many public bodies and 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 or public employee 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.

[W. Va. Code § 6B-2-5\(b\)\(1\)](#) provides, in relevant part:

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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. 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-2-5\(j\)](#) provides, in relevant part:

Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

In which they, an immediate family member, or a business with which they or an immediate family member is

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....

A public official may vote:

If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or....

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Planning commission members must be “qualified by knowledge and experience in matters pertaining to the development of the county” and “must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, farming, government and other relevant disciplines. [W. Va. Code § 8A-2-4\(b\)\(2\)](#) and (d). Given the required credentials of planning commission members, situations may arise where a member may be financially affected by the official actions of the planning commission and its subcommittees. Such is the case today. The issue today is whether the Requester may vote or participate in the zoning issues expected to be taken up by the Planning Commission and its solar committee.

Public officials, generally, may not vote on or participate in a matter in which they have a financial interest. W. Va. Code § 6B-2-5(j)(1)(A). As a lessor of land for the solar

project, no question exists as to the Requester's financial interest in the project. The issue is whether the Requester is permitted to vote on and participate in matters related to the solar power project due to the class exception which applies when an official is affected the same as "no less than five similarly situated persons or businesses...." W. Va. Code § 6B-2- 5(j)(1)(A).

The Requester has a financial interest in the 477 acres he and his wife own. The Requester is also a co-lessor with Sibling 1 in two of the leases, comprising 96 and 56 acres. Therefore, he has a direct financial interest in four of the eleven leases, totaling 629 acres. This gives the Requester a significant financial interest in the solar project.

Class Exception

While the Requester has a financial interest in the solar project, W. Va. Code § 6B-2-5(j)(2)(A) provides a "class exception," stating that a "public official may vote... [i]f the public official... [is] affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses." The Ethics Act further states that "a class shall consist of not fewer than five similarly situated persons or businesses." W. Va. Code § 6B-2-5(j)(2)(A).

The Ethics Commission has addressed the class exception in zoning matters in several past opinions. Most recently, the Commission issued [Advisory Opinion 2026-04](#), a companion opinion based on the same solar project. The Ethics Commission held that two other planning commissioners were part of a class of five or more adjacent property owners. This finding was also based on its review of the detailed parcel maps along with the planning administrator's assertions. The Commission found the planning commissioners were authorized to participate in all planning commission and committee matters related to the solar development project.

In Advisory Opinion 2026-04, the Commission observed its earlier opinions, including [Advisory Opinion 2017-19](#), which determined that planning commissioners could

participate in the zoning matters, including serving on the subcommittee, despite their potentially affected business interests because they belonged to a class of at least five individuals. The Commission further relied on [Advisory Opinion 2016-13](#), in which a city council member asked whether she could vote or otherwise participate in matters pertaining to the development of a hillside close to her neighborhood. The Commission found that the city council member did not have a unique interest in the development of the hilltop, but instead was a member of a class of 700 similarly situated homeowners. Therefore, the Commission held that the council member could vote on and otherwise fully participate in all zoning matters. Last, in [Advisory Opinion 2018-09](#), a city intended to purchase property for a city park in a neighborhood where a council member lived. The Commission held that the class exception applied to the city council member because he was one of 28 property owners who would be similarly affected by the city's purchase of property.

The Ethics Commission has not taken up whether siblings or other relatives of an official should be excluded from a potential class. The Requester's siblings have direct financial interests in the zoning issues, as Sibling 1 leases 482 acres and Sibling 2 leases 101 acres to the developer. The class exception does not explicitly call for the exclusion of relatives from a class group. The voting provision states that an official cannot vote in matters concerning "immediate family" members. [W. Va. Code § 6B-1-3](#) (f) defines "Immediate family," as "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."

Since "sibling" is not included in the definition of immediate family, this portion of the restriction is not applicable to the Requester. **The Commission concludes that the legislature did not intend to bar siblings from the class exception, given that the voting provision permits the Requester to vote on matters involving them.**

Therefore, the Requester's two siblings are not to be automatically excluded from the class because they are not immediate family members under the Act.

The Commission will now consider whether the Requester belongs in a class allowing him to participate in zoning matters in spite of his financial interest in them. The class exception does not require the class members to have *identical* financial interests, as the standard is "*similarly situated* persons or businesses." (emphasis added) The Requester has the largest financial interest of the eight property owners. The Commission concludes, however, that the Requester, with 629 acres, is part of a group of at least five similarly situated property owners, alongside those holding 357, 438, 482, and 518 acres. The Commission finds the Requester is not uniquely positioned relative to the other seven property owners and remains similarly situated to at least four other lessors. The Commission does not need to determine whether the owners of the three smallest holdings of 47, 101 and 102 acres should be included in the class as well.

The Ethics Commission holds that, based on the information presented, the planning commissioner belongs to a class of five or more similarly situated individuals, and therefore, the Requester is permitted to participate in all matters regarding the solar development project brought before the City and its various boards, commissions, and committees.

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11 and does not purport to interpret other laws or rules.

In accordance with W. Va. Code § 6B-2-3, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked or the law is changed.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
WV Ethics Commission