

ADVISORY OPINION NO. 89-16

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

Director

City Solicitor on behalf of a City Board of

Opinion Sought

Would it be improper for a member of the Board of Directors for a city to take part in the discussion and voting on the application of a developer to rezone a tract of land in which his part-time employer and father have an interest in order for there to be a quorum at the meeting?

Other Facts Relied Upon By The Commission

The director serves as a part-time staff member for the city's Union Mission, although he devotes on occasion more than forty hours per week. His salary is approximately \$600 per month. His father is the Executive Director of the mission. The mission is the owner of a small strip of land located within the area to be rezoned by the applicant, Plaza Associates and the area sought to be rezoned. The Board of Directors for the Mission has voted to execute an option to Plaza Associates, to be exercised upon rezoning. The City's zoning plan requires the affirmative vote of four-fifths of the Board in order for it to be re-zoned.

The City Board of Director is not an officer, nor a member of the Board of Directors, nor a member of the corporation, and takes no part in any executive decisions or management decisions made by the Union Mission's officers or board of directors.

Statutory Provisions Relied Upon By The Commission

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

West Virginia Code Section 6B-2-5(b)(1) states in 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.

ADVISORY OPINION

The Commission is required pursuant to West Virginia Code Section 6B-2-3 to render an advisory opinion on whether an action or proposed action violates the provisions of the Act and would thereby expose the person to sanctions by the commission or criminal prosecution.

This question does not fall within the Act since it doesn't expose the individual to sanctions by the commission nor criminal prosecution. Therefore the Commission is unable to render an advisory opinion on this matter.

However, the Commission would note that subsection 6B-1-2(c) suggests that the elected City Board of Director should disqualify himself from the voting on this matter since he is employed by the Mission and his father is the Executive Director of the group who owns property within the area to be rezoned.



Chairman