

ADVISORY OPINION NO. 89-62

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

Director of State Planning Council

OPINION SOUGHT

When should council members abstain from voting or discussing a specific topic where there is an apparent conflict of interest?

OTHER PERTINENT FACTS RELIED UPON BY THE COMMISSION

The State Planning Council is a fifteen-member Council appointed by the Governor. The purpose of the Council is to provide input and direction to the Health Care Cost Review Authority and to the West Virginia Division of Health in the state health planning process and annual updates of the State Health Plan. The Council was created as a result of legislation developed during the 1987 session. Members of the Council were first appointed during the 1989 legislative session.

The Council is currently considering adopting a draft administrative rule that describes meeting procedures. Council members have requested that the draft rule be amended to contain appropriate language to deal with the issue of conflict of interest.

The main thrust of concern involves identifying matters where council members have a conflict of interest in voting on specific topics.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

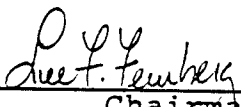
West Virginia Code Section 6B-2-3 states in pertinent part that a person subject to the provisions of this chapter may make application in writing to the Ethics Commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter, and would thereby expose the person to sanctions by the Commission or criminal prosecution...

ADVISORY OPINION

The Commission is only able to render an advisory opinion on actions or proposed actions that would result in sanctions being imposed by the Commission or criminal prosecution. (See West Virginia Code 6B-2-3.)

However, as a general rule a council member should refrain from voting and discussing matters that are personal to him as set out in subsection 6B-1-2(c) of the Act.

If more specific questions regarding the Act or circumstances are available for consideration the Commission would render an advisory opinion.



Chairman