

**ADVISORY OPINION NO. 91-41**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON JUNE 6, 1991**

**GOVERNMENTAL BODY SEEKING OPINION**

An Attorney on behalf of a City Council

**OPINION SOUGHT**

Whether it is a violation of the Ethics Act for certain members of a City Council to vote on issues (such as the budget and employee benefits) concerning City employees when such issues affect a class of individuals which may include relatives of the Council members?

**FACTS RELIED UPON BY THE COMMISSION**

Several members of a City Council have relatives who are employees of the City. Therefore, when the City Council takes action on the budget or makes decisions on employee wages and benefits, such decisions affect a class of employees that may include the Council members' relatives.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code Section 6B-1-2(c) states in pertinent part that...the State government and its many public bodies and local governments have many part-time public officials...serving in elected...capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official...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 pertinent part that...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.

## ADVISORY OPINION

Although it would not be a direct violation of the Ethics Act for the Council members to participate in such matters, pursuant to subsection 6B-1-2(c) of the Ethics Act, a part-time elected public official **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 that has become "personal to him".

The question presented by the requestor can be answered by simply defining the word "personal" as it is used in the Ethics Act. The Commission considers a matter to be "personal" when the public official has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote or **would give the appearance of impropriety**.

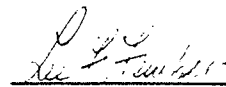
The Commission has determined that if the Council members vote on the City's budget it could give rise to the appearance of impropriety **if** the Councilman or a family member is pecuniarily affected either directly or indirectly by the result of the vote.

However, the voting prohibition does not apply to actions which involve the creation of laws, rules or regulations which affect the officials' financial interests **as a member of a class**. The public official or a family member may not be pecuniarily affected to a greater extent than any other member of the profession, occupation, group or class.

Therefore, the Commission would not consider a public official's vote on budget matters to be personal even if it benefits a relative (such as a son or brother) if the family member is affected as a class.

### **Private Gain**

When a class is particularly small the public official should be mindful of subsection 6B-2-5(b)(1) of the Ethics Act, which provides that a public official may not knowingly and intentionally use his office or prestige for his own private gain or the private gain of another individual. However, 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.

  
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Chairman