

ADVISORY OPINION NO. #91-77
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 7, 1991

GOVERNMENTAL BODY SEEKING OPINION

A City Attorney

OPINION SOUGHT

Whether it is a violation of the Ethics Act for the Mayor of a City to represent the City in negotiations with a private Company which employs the Mayor?

FACTS RELIED UPON BY THE COMMISSION

The City has a City Manager form of government, with the City Manager being hired by the City Council. The position of Mayor is part-time and primarily ceremonial in nature except that he serves to break all tie votes of the City Council.

The City Mayor called an executive session of City Council to hear a presentation from a private company concerning an easement of property. The Mayor is employed in the management section of the private company's employee relations department.

Following the presentation by the private Company, the Mayor stated his opposition to the plan and requested that he, the City Attorney and the City Manager be given the authority by City Council to negotiate for the City in obtaining certain concessions from the private Company which would benefit the City.

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 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 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 pertinent part that...a public official...may not knowingly and intentionally use his...office or the prestige of his...office for his...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.

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PRIVATE GAIN

Pursuant to subsection 6B-2-5(b)(1) of the Ethics Act a public official may not use his office for private gain. However, the Commission does not believe that if the City Mayor acts as a member of a City negotiating team with a private Company with which he is employed that it would create an opportunity for private gain. The Mayor would merely be one member of a three-person negotiations team and would not be responsible for the ultimate approval of certain easements of City property. Also, the Mayor has fully disclosed his personal relationship with the private company to the City Council.

Further, subsection 6B-2-5(b)(1) also provides that the performance of duties associated with the office for the advancement of public policy goals, without compensation, does not constitute the use of prestige of office for private gain. The requestor stated that the purpose of the negotiations is to obtain certain concessions from the private Company which would benefit the City and would constitute an advancement of public goals.

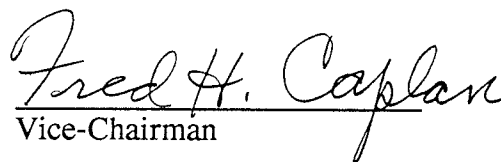
Therefore, it would not be a violation of subsection 6B-2-5(b)(1) of the Ethics Act for the City Mayor to represent the City in negotiations with a private Company with which he is employed.

VOTING

The Commission notes that subsection 6B-1-2(c) of the Ethics Act provides that local governments have many part-time public officials serving in elected capacities and that certain conflicts of interest are inherent in part-time service. However, the part-time 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.

Simply, a public official is not permitted to vote on or decide a matter that has become "personal" to that individual. 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 in order for a public official's recusal to be effective he must physically remove himself from the room during the discussion and decision making process.

The Commission previously determined that matters which directly affect a public official's employer are "personal" to such public official. Therefore, the City Mayor should not vote on the proposed easements of City property by a private Company with which he is employed since it would give rise to the appearance of impropriety.


Vice-Chairman