

ADVISORY OPINION NO. 95-06

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 2, 1995

GOVERNMENTAL BODY SEEKING OPINION

A Mayoral Candidate

OPINION SOUGHT

Is it a violation of the Ethics Act for the requester to serve as the Town Mayor when his father is employed by the Town?

FACTS RELIED UPON BY THE COMMISSION

The requester has declared his candidacy for the office of Mayor of a Town. The requester's father is a paid member of the volunteer fire and rescue squad of this Town. His salary is paid by the City.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-1-2(c) states in pertinent part that...the state...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 §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...

ADVISORY OPINION

In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which per se prohibits the requester from seeking election to the position of Town Mayor.

Voting

Pursuant to West Virginia Code §6B-1-2(c) a part-time elected official should seek to be excused from voting, deciding or otherwise acting on a matter that has become "personal" to him. The Commission previously defined "personal" as situations where the public official has any direct or indirect pecuniary interest in the matter, is affected in a manner which may influence his vote, or when voting 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.

However, in Advisory Opinion #92-11 the Commission determined that the voting prohibition contained in WV Code §6B-1-2(c) does not apply to actions which involve the creation of laws, rules, regulations or policies which affect the public official's or family member's financial interests as a **member of a class**. There is no conflict of interest if the public official or his family member is not pecuniarily affected to a greater extent than any other member of the profession, occupation, group of class.

Therefore, the Commission finds that the requester, if elected, should not vote on any matter that may specifically and uniquely affect his father to a greater extent than other comparable employees.

Private Gain

West Virginia Code §6B-2-5(b)(1) provides that a public official may not use his office or the resulting prestige for his own private gain or for the private gain of another. Consequently, if the requester is elected, he may not use his status or influence as Mayor to obtain, increase or promote the interests of his father as an employee of the Town. As previously noted, recusal from any participation in the decision making process would insulate the requester from appearing to violate the Ethics Act's prohibition against use of his public office for the private gain of another.


Chairman