



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Conflict of Interest
Concerning Zoning Board

Honorable Carl E. Hawkinson
State's Attorney
Knox County
Galesburg, Illinois 61401

Dear Mr. Hawkinson:

I have your letter wherein you ask the following
questions:

"a. Does a member of our County's Zoning Board of Appeals have a conflict of interest when he is a stockholder or a member of the Board of Directors of a corporation which is petitioning the county board for a zoning variance?"

"c. Does a member of the Knox County Board of Supervisors have a prohibited conflict of

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interest when he holds stock in a corporation which is petitioning the county board for a zoning variance?"

It is my opinion that they both would have a conflict of interest. It is a well-established rule of law that where a member of a governmental body has a direct personal interest in a matter coming before such body, he is disqualified from voting thereon where the body acts in the judicial or quasi-judicial capacity. (10 A.L.R. 3d 694.) There are no Illinois cases involving this rule specifically applied to a variance situation but there are several cases from other states. The case of Piggott et al. v. Borough of Hopewell et al. (1952), 22 N.J. Super. 106, 91 A.2d 667 presented a factual situation similar to the one at hand and held at 669:

"

* * *

The question is: Was the private interest of the member of the borough council such that he could not impartially consider the application for a variance? 'A member of a governmental body having a direct personal interest in a matter coming before such body is disqualified from voting thereon, at least where the body acts in a judicial or quasi-judicial capacity.' 133 A.L.R. 1258; Illinois Power &

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Light Corp. v. Peterson, 322 Ill. 342, 153 N.E. 577, * * * And certainly in granting a variance the borough council was acting in a judicial capacity.

'A judicial act is one which imposes burdens or confers privileges in specific cases, according to the finding of some person or body, whether the facts exist which make a general rule applicable to the specific case, or according to the discretionary judgment of such person or board as to the propriety of imposing the burden or granting the privilege in a specified case.' West Jersey Traction Company v. Board of Public Works of City of Camden, supra [56 N.J.L. 431, 29 A. 165]; Camden Horse Railroad Co. v. West Jersey Traction Co., 57 N.J.L. 710, 34 A. 1134.

The interest which disqualifies a member of council to vote is a personal or private one, not such an interest as he has in common with all other citizens or owners of property, nor such as arises out of the power of the municipality to tax his property in any lawful manner. Erie City v. Grant, 24 Pa. Super. 109 (Super. Ct. 1904); 133 A.L.R. 1261.

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In your letter you mention the case of Athey v. City of Peru (1974), 22 Ill. App. 3d 363 and Anthony v. City of Kewanee (1967), 79 Ill. App. 2d 243. However, these cases are not applicable to the situation at hand because they deal with

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the matter of a zoning ordinance as opposed to a zoning variance. In those cases the court held the board was acting in a legislative capacity. Therefore, a different conflict of interest standard applied.

In your letter you also mention the Corrupt Practices Act (Ill. Rev. Stat. 1975, ch. 102, par. 3). The Corrupt Practices Act is inapplicable to this situation because it prohibits a board member from having an interest in a contract on which he must act or vote. Rezoning of property is not a contract.

You then ask:

b. If a member of the Knox County Zoning Board of Appeals has a prohibited conflict of interest in such a situation, is an advisory recommendation of the zoning board of appeals thereby rendered invalid or void?

d. If such county board member has a prohibited conflict of interest, is the action of the county board approving said zoning variance thereby rendered invalid or void?

It is my opinion that the action of the zoning board of appeals and the county board would be voidable. The member with the conflict of interest should disqualify

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himself before the board proceeds in any way to consider the variance on the property he has an interest in. In Piggott et al. v. Borough of Hopewell et al. (1952), 22 N.J. Super. 106, 91 A.2d 667 at 670 held:

" * * *
We cannot overlook the fact that he does have a present, direct, immediate and particular interest as lessee in the property which is the subject of the non-conforming use and we are of the belief that he should have disqualified himself. * * *"

" * * *
We must conclude that the action of George C. Clark, a member of the borough council, in participating in the vote and in not disqualifying himself rendered the entire proceeding voidable.

* * *

The zoning board of appeals and county board of supervisors should proceed to decide absent the member who has a personal interest in the proceedings.

Very truly yours,

A T T O R N E Y G E N E R A L