

ADVISORY OPINION 89-66

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

Mayor of a city

OPINION SOUGHT

Whether a city should be granted an exemption to contract for wrecker services with an automobile dealership owned by a member of city council?

OTHER FACTS RELIED UPON BY THE COMMISSION

Due to poor economic conditions in this city, many businesses no longer are available to provide big wreckers for road side service. There are presently only two car dealerships which provide wrecker service. One business provides 24-hour service and has a big wrecker for large motor vehicles. It is owned by a member of the city council. The other available dealership provides wrecker service only during the day hours, and does not have a big wrecker for large motor vehicles.

The use of a 24-hour wrecker service is necessary when police officers arrest an individual during the night. Most of the DUI (Driving Under Influence) arrests occur during that time, and it is necessary for the officers to make an inventory of the motor vehicle and to secure the vehicle by towing it to a secured area.

If the City cannot use this service and is required to go out of the area to obtain wrecker service, it will create an excessive cost and undue hardship. Furthermore, it will have a substantial interference with the police department's operation in arresting drunk drivers. The situation is not as bad during day hours because the other dealership may be available.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no elected or appointed public official...with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority or with which he or she is employed...

West Virginia Code 6B-2-5(d)(3) states that where the provisions of subdivision (1) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivision (1) of this subsection.

ADVISORY OPINION

It is the Commission's finding that the city has demonstrated that excessive cost, undue hardship and substantial interference with law enforcement would result if the provisions of subsection (d)(1) were applied.

Therefore, based on the facts set forth the Commission hereby grants the city an exemption pursuant to subsection (d)(3) to contract with a council member to provide wrecker services for the city during the night hours or at anytime when the other wrecker service is not available to provide assistance to the city.

  
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Chairman