

ADVISORY OPINION NO. 90-02

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Town Recorder

OPINION SOUGHT

1. Whether it is a violation of the Act for a Town to purchase gasoline and obtain repair services from a business owned by a Town employee?
2. Whether it is a violation of the Act for a Town to contract with a gas service station which is owned by the son of a Town Council Member?

OTHER FACTS RELIED UPON BY THE COMMISSION

A Town Police Patrolman owns a convenience store which sells gasoline and services automobiles owned by the Town. Before the officer was hired, the Town conducted business with his convenience store.

A Town Council member's son owns and operates a gas service station which conducts business with the Town.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected public official or public employee or member of his or her immediate family or business 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)(2) states in pertinent part that... an elected public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser.

West Virginia Code 6B-2-5(d)(3) states in pertinent part that...  
(3) Where the provisions of subdivision (1) and (2) 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...governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption.

#### ADVISORY OPINION

1. An analysis of the facts presented and pertinent statutory provisions of subsection (d)(1) and (2) follows:

a. The patrolman is a public employee, since he is employed by the Town as a police officer.

b. As the owner of a convenience store, the patrolman has more than a limited interest in a business that contracts with the governmental agency with which he is employed.

c. For the purpose of this section "limited interest" is defined as an interest not exceeding thirty thousand dollars or ten percent of outstanding shares of stock issued by a company.

d. Therefore, it would be a violation of subsection (d)(1) of the Act for the Town to purchase goods and services from the convenience store owned by a Town employee.

e. However, the affected governmental body has made a written application to the Commission for an exemption since undue hardship or substantial interference would result from the enforcement of this subsection. The Commission hereby grants the requested exemption.

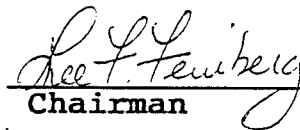
2. An analysis of the facts presented and pertinent statutory provisions of subsection (d)(1) and (2) follows:

a. A member of the Town Councilman's family has an interest in the benefits or profits of a contract with the governmental body over which he has direct authority.

b. However, for the purpose of this section "immediate family member" includes in part, a dependent child.

c. Therefore, unless the son is dependent on the Town Councilman, it is not a violation of subsection (d)(1) of the Act for the Town to purchase goods and repairs from a service station owned by the Town Councilman's son.

d. The Town Councilman should be mindful of subsection (b)(1) of the Act which states that a public official may not intentionally use his office or the prestige of his office for his own private gain or that of another.

  
Chairman