

ADVISORY OPINION NO. 90-09

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A House of Delegates Candidate

OPINION SOUGHT

Whether it is a violation of the Act for the President and owner of a wholesale business which sells to a Municipality, a County Commission and a Transit Authority to seek election or be elected to a seat in the House of Delegates?

OTHER FACTS RELIED UPON BY THE COMMISSION

The requestor is the President and owner of a wholesale business which "sells" merchandise to a Municipality, a County Commission and a Transit Authority. Purchases are made by these entities through competitive bidding, with the contract being awarded to the lowest bidder. The requestor does not have direct authority nor has he ever been affiliated in any manner with these agencies.

The requestor has filed as a candidate, seeking election to the House of Delegates.

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 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...Provided, however, that nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body.

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... an elected public official...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.

ADVISORY OPINION

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

1. If successful in his bid for a seat in the House of Delegates, the requestor would become an elected public official.
2. Since the requestor is the president and owner of the company he has more than a limited interest in a business that has a public contract with certain governmental entities (a Municipality, a County Commission, and a Transit Authority).
3. For the purpose of this section "limited interest" is defined as an interest not exceeding ten percent of the outstanding shares of stock issued by a corporation or thirty thousand dollars, whichever is the lesser.
4. However, subsection 5(d)(1) specifically provides that nothing herein shall prohibit a member of the Legislature from entering into a public contract with any governmental body.
5. Therefore, it would not be a violation of subsection 5(d)(1) of the Act for the requestor, if elected to the House of Delegates to contract with a governmental agency.

However, the requestor, if elected should be mindful that nothing in this opinion shall be construed to state that other provisions in the Act such as subsections 5(b) or (e) are not applicable, should violations become evident to this commission.

Therefore, the Delegate should not reveal any confidential information acquired by him as a result of his position to further his business's interests.

Also, subsection (b)(1) requires the Delegate not to intentionally use the prestige of his office for his own private gain or for that of another person.

Furthermore, the Delegate should be aware of subsection 6B-2-1(c) which provides that all public officials and employees 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 particular matter when the matter has become personal to them.

Chairman