

ADVISORY OPINION NO. 93-29

ISSUED BY THE

WV ETHICS COMMISSION

ON AUGUST 5, 1993

GOVERNMENTAL BODY SEEKING OPINION

A City Mayor

OPINION SOUGHT

Whether an exemption should be granted to allow a City Council member to serve as the insurance agent for the City?

FACTS RELIED UPON BY THE COMMISSION

The City is currently insured with the Board of Risk and Insurance Management and pays a premium of approximately \$35,000. In the past the City paid an agent's commission of 8% which cost the City approximately \$2,800 per year.

One of the City's newly elected Council members has been a local licensed insurance agent for thirty years. This Council member has offered to serve as the agent for the City without commission or other remuneration.

The City has requested an exemption from WV Code §6B-2-5(d)(1) which prohibits a public official from being a party to a contract over which he has direct authority or control.

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...is associated may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he...may have control...

West Virginia Code §6B-2-5(d)(3) states in pertinent part that...where the provisions of subdivisions (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...municipality...or other governmental agency, the affected governmental body or agency may make a written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

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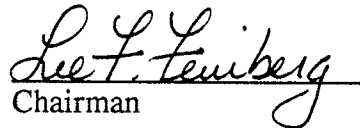
Pursuant to WV Code §6B-2-5(d)(1) a public official may not be a party to or have an interest in any public contract over which he has direct authority or control. In this instance the City Council member does have authority and control over the selection of the agent to administer the City's insurance policy.

Although the Council member would not have a pecuniary interest in the City's insurance contract since he has volunteered to serve as the agent without commission or other remuneration, the Ethics Act prohibits a public official from merely being a "party to" a public contract over which he has control.

Therefore, it would be a violation of WV Code §6B-2-5(d)(1) for the City Council member to serve as the City's insurance agent since he would be a party to a public contract over which he has direct control.

However, WV Code §6B-2-5(d)(3) provides that when the provisions of this subsection would result in excessive cost, undue hardship or other substantial interference with the operation of the public body or agency, the affected governmental body may make a written application to the Ethics Commission for an exemption from this subsection. The City has submitted such a request.

As previously noted, in the past the City paid an insurance agent an 8% commission to administer the City's insurance policy at a cost of approximately \$2,800 per year. However, a City Council member has offered to serve as the agent for the City's insurance policy without commission or remuneration. The Commission determines that excessive costs and undue hardship would occur if the City is unable to utilize the offer of free services from the City Council member. Therefore, the Commission hereby grants the requested exemption.


Chairman