

ADVISORY OPINION NO. 99-39

Issued On January 6, 2000 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Town** asks the Ethics Commission for a hardship exemption to permit it to contract for services from a member of Town Council.

FACTS RELIED UPON BY THE COMMISSION

The Town operates its own water treatment facility which includes a sludge settlement pond. The small pond, approximately 50 feet by 100 feet, must be dredged periodically and the Town lacks the personnel and equipment to handle the project. The Town recently advertised for bids to dredge the pond. The ads appeared in appropriate newspapers on two separate occasions, but despite several phone inquiries from potential contractors, it received only one bid and it came from a business owned by a member of the Town's Council.

The Mayor believes that the project is too small to attract additional contractors who might otherwise be willing to bid and, as the bid is in line with what it has paid to have the pond dredged in the past, the Town asks the Commission to exempt it from the provisions of the Ethics Act which prevents it from entering into a contract with a member of Town Council.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(d)(1) provides in pertinent part that ... no elected or appointed 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 ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control...

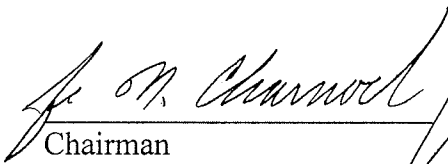
WV Code 6B-2-5(d)(3) provides in pertinent part that ... Where the provisions of subdivisions (1) and (2) of this subsection would result in ... excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption...

ADVISORY OPINION

The Ethics Act prohibits public servants from being a party to or having an interest in a public contract which their public position gives them the authority to award or control. This prohibition applies to contracts between the Town and the members of Town Council.

The Ethics Act also provides that the Ethics Commission may grant an agency an exemption from this prohibition, if the agency demonstrates that its enforcement will cause the agency excessive cost, undue hardship or substantial interference with its operation.

Based on the representations contained in the letter submitted on behalf of the Town, the Commission finds that the Town has made a reasonable effort to obtain bids for work which is essential to the operation of its water treatment facility and hereby grants an exemption from the provisions of WV Code 6B-2-5 (d), which will permit the Town to accept the bid submitted by a member of Town Council.


Chairman