

ADVISORY OPINION NO. 2001-27 (Revised)

Issued On October 4, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Town Council** asks whether it may pay for materials to replace similar materials supplied the Town by a company owned by the former Mayor.

FACTS RELIED UPON BY THE COMMISSION

While in office, the former Mayor arranged for Town personnel to use rough cut boards from his lumber mill to brace the roof of an existing building the Town bought to serve as a new Town Hall. Thereafter, the Mayor ordered \$1,100 worth of finished lumber from a local lumber yard to replace the lumber from his mill. He asks the Town to pay for the replacement lumber ordered.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code § 6B-2-5 (b) provides that a “public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.”

WV Code § 6B-2-5 (d) *Interests in public contracts*, provides in part that ... no elected or appointed official or 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 ...

ADVISORY OPINION

The Ethics Act prohibits public servants from having a personal financial interest in a public contract, purchase or sale which their public positions give them the authority to award or control. WV Code 6B-2-5 (d) This prohibition means that neither the Mayor nor Council members may sell goods or services to the Town. Except for an emergency situation, it would be a violation of this prohibition for the Mayor to **sell** lumber to the Town for use in rehabilitating Town property.

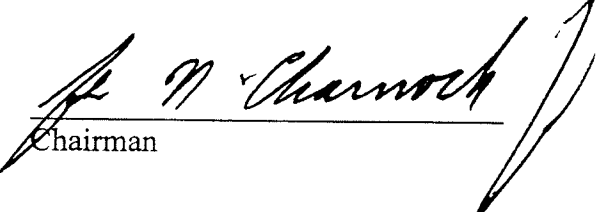
However, this opinion, sought by the Town Council, does not deal with or resolve the question of whether the Mayor’s action in “**loaning**” lumber to the Town, may be a violation of the Ethics Act’s prohibition against private interests in public contracts. Here the Commission is advising the Council members who seek to determine whether it would be a violation for them to pay the bill for the lumber the Mayor ordered to replace the lumber he had supplied the Town.

Because Council members themselves have no personal financial interest in the transaction, the prohibition against personal interests in public contracts does not apply to them. They are, however, subject to the Act's prohibition against public servants using their public positions for their own private gain or that of another person. WV Code § 6B-2-5(b). Council could be at risk for a violation of this provision if it knowingly approved the purchase of lumber from the Mayor's lumber mill.

While this Opinion is not intended to require or compel Council to pay for lumber to replace the lumber supplied by the Mayor, the Commission finds, based on the facts of this unusual situation, that doing so would not constitute a prohibited use of office for the private gain of another - provided the value of the lumber supplied by the Mayor's mill is equal to or greater than the cost of the replacement lumber.

If the Mayor is simply made whole, Council Members would not be using their public positions for the Mayor's private financial gain. However, it would be a violation for Council to pay for lumber of greater cost than the value of the materials supplied by the Mayor.

This Opinion is confined to the facts and circumstances of this particular request and may not be relied upon by others. The Commission cautions others to avoid, except where compelling circumstances require it, borrowing goods or services from those who control the return or replacement of those goods or services. The risk of appearing to try to skirt the law, the difficulty in distinguishing loans from sales and the potential for the appearance of impropriety are so great that other arrangements should be made.


Chairman

ADVISORY OPINION NO. 2001-27

Issued On August 9, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

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FACTS RELIED UPON BY THE COMMISSION

While in office, the former Mayor arranged for Town personnel to use rough cut boards from his lumber mill to brace the roof of an existing building the Town bought to serve as a new Town Hall. Thereafter, the Mayor ordered \$1,100 worth of finished lumber from a local lumber yard to replace the lumber from his mill. He asks the Town to pay for the replacement lumber ordered.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code §6B-2-5 (b) provides that a "public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person."

ADVISORY OPINION

If the value of the lumber provided by the Mayor is equal to or greater than the cost of the replacement lumber, it would not be a violation for the members of Town Council to pay for the replacement lumber. If the Mayor is simply made whole, Council Members would not be using their public positions for the Mayor's private financial gain. However, it would be a violation for Council to pay for lumber of greater cost than the value of the materials supplied by the Mayor.

Note. This opinion does not deal with the question of whether the underlying transaction may be a violation of the Ethics Act's prohibition against public servants being a party to or having a personal financial interest in a public contract, purchase or sale which their public position gives them the authority to award or control. WV Code §6B-2-5(d).


Chairman