

ADVISORY OPINION NO. 2002-19

Issued On December 5, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Board** asks for an exemption to permit it to contract with the Board's Executive Secretary to lease space for the Board's offices.

FACTS RELIED UPON BY THE COMMISSION

The State Board is currently renting satisfactory office space for \$300 monthly in a building owned by its Executive Secretary and her husband. The Board's lease includes utilities and janitorial services. The agency recently conducted an extensive canvass of local realtors and advertised in the local newspaper for alternative office space. From the information supplied to the Ethics Commission, it is clear that all of the suitable properties available were considerably more expensive than the Board's current offices.

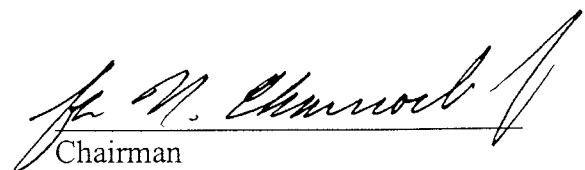
CODE PROVISIONS RELIED UPON BY THE COMMISSION

WV Code 6B-2-5(d)(1) *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 being a party to or having a financial interest in a public contract which they have the power to award or control. This prohibition prevents a State Board from leasing property from its Executive Secretary. However, the Ethics Commission has the power to grant an agency an exemption from this prohibition where it appears that the prohibition would cause the agency undue hardship.

The Commission finds that requiring the State Board to relocate and rent office space from someone other than its Executive Secretary would result in an undue financial hardship to the Board. Therefore, the Ethics Commission grants the Board an exemption from the prohibition of WV Code 6B-2-5(d) to allow it to continue leasing office space from its Executive Secretary under the terms provided in its current lease.


Chairman