

ADVISORY OPINION NO. 2003-01

Issued On February 6, 2003 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Town Council asks for an exemption to permit it to contract with the current Mayor to lease a facility for housing the Town Hall and various municipal agencies.

FACTS RELIED UPON BY THE COMMISSION

The Town Council seeks to consolidate all Town entities together in one facility. Due to expansion of the County 911 Center near the current Town Hall, Council Members believe the remaining parking and storage space will not be adequate. The only suitable property available in the Town for relocating existing facilities is owned by the Town's Mayor. Commercial property in the town ordinarily rents for \$3.00 to \$3.50 per square foot. The Mayor has offered to lease his property on a sliding scale from \$1.60/ sq. ft. for the first two years to \$2.00/ sq. ft. by the seventh year.

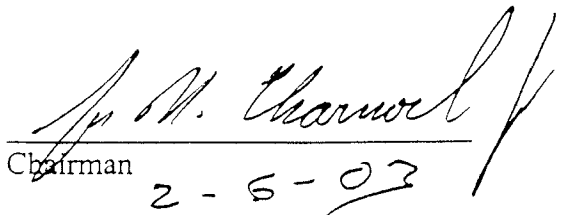
CODE PROVISIONS RELIED UPON BY THE COMMISSION

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 Town Council from entering into a lease agreement with its Mayor. 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 prohibiting the Town Council from relocating its Town Hall and other municipal activities to a central location leased from the City's Mayor at a reasonable rate would result in an undue hardship to the Town. Therefore, the Ethics Commission grants the Town an exemption from the prohibition of WV Code 6B-2-5(d) to allow it to lease the property described from its Mayor, consistent with other applicable laws, under the terms specified through the seventh year.


Chairman
2 - 6 - 03