

ADVISORY OPINION NO. 95-39
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON SEPTEMBER 7, 1995

GOVERNMENTAL OFFICIAL SEEKING OPINION

A Mayor

OPINION SOUGHT

Is it a violation of the Ethics Act for a Mayor to park his vehicle and store equipment in the municipal garage while they are used for city purposes?

FACTS RELIED UPON BY THE COMMISSION

A Mayor privately owns a dump truck, asphalt spreader, and an asphalt roller. The city council has accepted the Mayor's offer of the use of this equipment and asphalt paid for by the Mayor so that city streets can be paved.

The Mayor is storing the vehicle in the city garage while it is in use. This storage will not require city owned equipment to be left outside. The purpose for using the city garage is to prevent vandalism and ease of access to the equipment for city projects.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(b)(1) states in pertinent part 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.

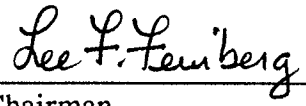
ADVISORY OPINION

West Virginia Code §6B-2-5(b)(1) prohibits a public servant from using his or her office or its prestige for personal private gain. A legislative rule implementing this provision, 158 CSR 6-5.2, cautions that public servants "shall not use government property for personal projects or activities that result in private gain."

Under the facts provided in this request, however, the overwhelming gain is to the benefit of the city in having its streets paved at virtually no charge. While there may be an incidental benefit to the requester in not having to bear the personal expense of providing a safe, secure place to store his equipment for the period of time it is in use for the benefit of the city; this benefit is not the type of private gain proscribed by the Ethics Act.

Therefore, it would not be a violation of WV Code 6B-2-5(b)(1) for the requester to store his dump truck, asphalt spreader and roller at the city garage while this equipment is being used for the benefit of the city at large along with a donation of asphalt by the Mayor.

This opinion is not meant to be an endorsement of the requester's right to store the equipment at the city garage for an indefinite period because of a one-time offer to the city, however generous it may be. Use of the city's garage as a **permanent** storage place for the equipment would likely have a value in excess of the gift to the city and therefore would be an improper use of office for private gain.


Chairman