

CONTRACT EXEMPTION NO. 2008-11

Issued on September 4, 2008 By the

WEST VIRGINIA ETHICS COMMISSION

CONTRACT EXEMPTION SOUGHT

The City of Bridgeport requests a hardship exemption to purchase certain real property that is owned in part by an elected member of the Bridgeport City Council.

FACTS RELIED UPON BY THE COMMISSION

The City of Bridgeport wants to expand and enlarge the Bridgeport Public Library. The Library enjoys extremely high usage, functioning in the mode of a regional public library providing services to users from not only Bridgeport and Harrison County, but from several other counties as well. The current building housing the Library is completely full, with no available space for additional display or storage of books, holding meetings, conducting programs, or other public purposes. There is also a shortage of parking close to the Library.

The City has determined that relocating the library or opening a satellite branch at another location is not financially feasible or desirable. Therefore, the City has initiated negotiations with the owner of four conjoined and adjacent lots which were previously put on the market for sale, and comprise the only available adjacent property for expanding the existing library facility.

All adjacent property which the City seeks to purchase is owned by M G Holdings, a limited liability corporation. Harry M. Murray, III, an elected member of the Bridgeport City Council, is a Member of M G Holdings, LLC. Council Member Murray has not participated in any of the discussions or negotiations regarding this proposed purchase.

M G Holdings obtained an appraisal of the real property included in the proposed transaction which valued the land at \$455,000.00. The City obtained an independent appraisal which valued the land at \$400,000.00. Following negotiations, the parties are proposing a purchase price of \$425,000.00 for these parcels.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(d)(1) *Interests in public contracts*, provides in part:

. . . 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: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body.

* * *

(3) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, 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 from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

Pursuant to W. Va. Code § 6B-2-5(d)(1) an elected public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control unless his or her governing body seeks, and receives, an exemption to contract with the public official. The Ethics Commission decides whether to grant or deny exemptions under the Ethics Act on a case-by-case basis.

The Bridgeport City Council's proposed contract to purchase real estate for \$425,000.00 from M G Holdings, LLC, of which an elected member of the Bridgeport City Council, Harry M. Murray, III, is a Member, would result in a prohibited public contract under the provisions of W. Va. Code § 6B-2-5(d)(1), unless the City receives an exemption from the prohibition.

The Ethics Commission is authorized to grant an exemption if application of the prohibition results in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency. Here, the City has documented the hardship that will result to its citizens and other people who use its public library, a service which the City considers to be very important, if the current library facility is not expanded. Accordingly, the Commission hereby grants a hardship exemption authorizing the City of Bridgeport to proceed with the proposed purchase of real estate from M G Holdings, LLC, under the terms specified in this Contract Exemption, provided that the affected Member of Council, Harry M. Murraray, III, is recused from any participation in the Council's discussion, approval, implementation or execution of the contract to purchase the real estate in which he holds a financial interest. This recusal requirement further applies to any subsequent issues that may arise before Council regarding this contract.

Inasmuch as exemptions are only granted on a case-by-case basis, this decision is limited to the facts and circumstances of this particular case, and may not be relied upon as a precedent by other persons.

s/s _____
R. Kemp Morton, Chairman