

## **Advisory Opinion 2019-24**

Issued on September 5, 2019, by The

West Virginia Ethics Commission

### **Opinion Sought**

A **Town Council** asks whether it may pay an invoice submitted by the previous mayor's wife.

### **Facts Relied Upon by the Commission**

The Requester has received an invoice from the previous mayor's wife in the amount of \$117 for preparing paperwork associated with water backflow. The work consisted of preparing and sending letters to businesses regarding actions to be taken, if any, to meet requirements associated with preventing water backflow. The work was performed prior to the previous mayor leaving office. The Requester is unsure whether it should approve and pay the invoice.

### **Provisions Relied Upon by the Commission**

W. Va. Code§ 6B-2-5(b)(1) states, in relevant part:

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.

W. Va. Code§ 6B-2-5(d)(1) states, in relevant part:

[N]o elected or appointed public official or public 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 the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control ....

W. Va. Code§ 6B-2-5(d)(2) states, in relevant part:

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder, or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than \$5,000.

W. Va. Code § 6B-2-5(d)(3) states:

If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

### **Advisory Opinion**

The Ethics Act prohibits public officials or their immediate family members from having an interest in a public contract over which the public official has authority and control. W. Va. Code § 6B-2-5(d)(1). A public official or immediate family member shall not, however, be considered as having a prohibited financial interest in a public contract when such a person has a limited interest. W. Va. Code § 6B-2-5(d)(2). A limited interest is "[a]n interest which does not exceed \$1,000 in the profits or benefits of the public contract or contracts in a calendar year." W. Va. Code § 6B-2-5(d)(2)(A). Still, even if a public official has a limited interest, "he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or *limited* financial interest." W. Va. Code § 6B-2-5(d)(3) (emphasis added).

Here, the previous mayor's wife sent the Requester an invoice for \$117 for work she performed for the town while the previous mayor was still in office. A mayor has direct authority and control over the awarding of a town's public contracts. W. Va. Code R. § 158-8-2 (providing that all elected or appointed public officials in the executive branch of city government are examples of individuals with direct authority and control over the awarding of public contracts). **The amount of the contract, however, constitutes a limited interest under the Ethics Act. Therefore, so long as the previous mayor did not make, participate in making, or in any way attempt to use his office to influence the town's decision with respect to his wife's work, the Ethics Act does not prohibit the contract. If the previous mayor did use his office to either secure his wife work for the town or influence the town's decision in this regard, the contract is impermissible per W. Va. Code § 6B-2-5(d)(3).**

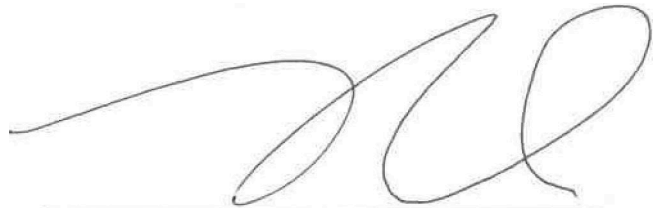
The Commission has previously determined that it is a violation of the Ethics Act's private gain provision for an individual to approve payment on a contract when the individual knows the contract is otherwise impermissible under the Ethics Act. In Advisory Opinion 1997-30, a town recorder asked whether she could write checks paying for services

performed by a business owned by a council member. The Ethics Commission held that the recorder would be guilty of using her office for the private gain of another if she paid the bills. The Ethics Commission reasoned that if the recorder paid the bills as approved by council, it would result in the council member receiving public funds he or she would not have a legal right to receive due to the Ethics Act's prohibition on having financial interests in public contracts at W. Va. Code§ 6B-2-5(d)(1).

**Therefore, if the contract is impermissible due to the previous mayor having influenced the town's decision regarding his wife's work, the Requester may not approve paying the invoice because it would constitute the improper use of office for the private gain of another. W. Va. Code§ 6B-2-5(b)(1).**

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W Va. Code §§ 6B-1-1 through 6B-3-11 and does not purport to interpret other laws or rules.*

*In accordance with W Va. Code § 6B-2-3, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked or the law is changed.*

A handwritten signature in black ink, consisting of a series of loops and curves, positioned above a horizontal line.

Lawrence J. Tweel, Acting Chairperson  
West Virginia Ethics Commission