

ADVISORY OPINION NO. 2005-05

Issued On May 5, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Town Council** asks for an exemption to permit it to purchase merchandise from a hardware store owned by an elected Town Council Member.

FACTS RELIED UPON BY THE COMMISSION

The Town is located in a rural area of the state. An elected Town Council Member owns the only hardware store in Town. The Town has been making purchases from the hardware store for approximately thirty (30) years. Due to ongoing maintenance projects in the Town, frequent trips to the hardware store are required. A plumbing store has also recently opened in the Town.

The travel distance to the next closest hardware store is approximately thirteen (13) miles. The approximate round trip travel time is one (1) hour. If the Town is prohibited from making purchases at the locally owned hardware store, then the Town employees will have to make a twenty-six (26) mile round trip for the majority of its hardware needs. While some purchases can be made at the plumbing store, this store carries a limited amount of basic hardware supplies.

Due in part to rising fuel costs, the IRS has increased the allowable mileage expense reimbursement rate to forty cents (.40). Applying this rate, the expense of making a round trip to the next closest hardware store is ten dollars and forty cents (\$ 10.40).

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. 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 ...

WV Code § 6B-2-5(d)(3) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a ...municipality...the affected government body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

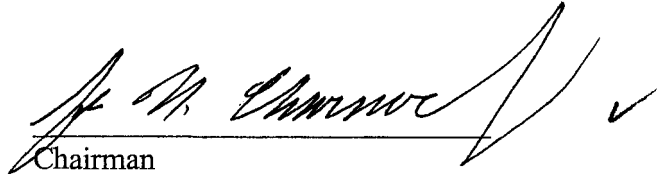
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The Ethics Act prohibits public servants from being a party to or having a financial interest in a public contract which they have the power to award or control. However, the Ethics Commission has the power to grant a municipality an exemption from this prohibition where it appears that the prohibition would result in excessive cost to the public body or undue hardship.

Maintenance projects may require numerous trips to a hardware store for small ticket items such as screws and nails. Oftentimes when planning a project or addressing daily maintenance needs, it is difficult to predict with certainty which hardware supplies will be required. It would be unreasonable to require the Town employees to make a twenty-six (26) mile round trip for every purchase. Not only would such daily trips be burdensome, there are also associated vehicle and labor costs. Small towns have a limited number of employees and financial resources. Under the facts presented, requiring the Town to make purchases from a hardware store located thirteen (13) miles away would result in excessive costs and would create an undue hardship.

Based upon the foregoing, the Ethics Commission grants the Town an exemption from the prohibition of W.Va. Code § 6B-2-5(d), with limitation, to allow it to purchase hardware from the store owned by a Town Council Member. The exemption is granted with the limitation that any one item costing in excess of \$ 100.00, except in emergency situations, should not be purchased from the Town Council Member's store.

The Commission notes that exemptions must be granted on a case-by-case basis. Therefore, this opinion is limited to the facts and circumstances of this particular case, and may not be relied upon as a precedent by other persons.


Chairman