

ADVISORY OPINION NO. 2005-19

Issued On December 1, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A County Solid Waste Authority seeks a waiver to rent a roller from its manager.

FACTS RELIED UPON BY THE COMMISSION

Recently, the Solid Waste Authority was reaching capacity at its only landfill and it was necessary to construct additional space for disposal of solid waste. One piece of heavy equipment necessary to accomplish this construction was a roller. Further, the grade of the construction area required a relatively small roller.

The manager checked with various equipment companies, including Nations Rent and Leslie Equipment Company, to locate an available roller. The least expensive roller available from a vendor rented for approximately \$2600 per month, plus freight. In addition, this roller was a large model, unsuitable for use on the construction site slope.

The manager owns certain heavy equipment, including a small roller with a 54-inch drum. He agreed to rent this roller to the Authority for \$1500 per month for three months. Because the manager of the County Solid Waste Authority has authority and control over the execution of contracts entered into by the Authority, the Authority seeks a waiver authorizing payment of this \$4500 rental fee to its manager.

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. . . .

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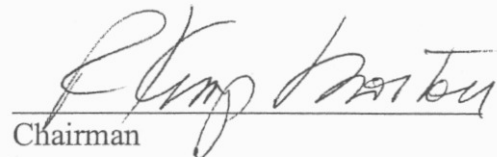
The Ethics Act prohibits public servants from being a party to or having a financial interest in a public contract which they have the power to award or control. However, the Ethics Commission has the power to grant an exemption from this prohibition where it appears that the prohibition would result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

The Solid Waste Authority has explained that it was facing a virtual emergency situation when its landfill was nearing capacity. One piece of equipment essential to constructing an additional area for disposal of solid waste was a roller. Moreover, the grade of the construction area dictated that a small roller be used.

The manager was only able to locate two rollers. One was a large roller which rented for \$2600 per month, plus freight. The other, a smaller roller more suitable for use on the construction slope, was available from the manager's heavy equipment business. He agreed to rent the equipment for \$1500 per month for three months. The Authority now seeks approval to rent from its manager and pay the \$4500 rental fee for work which has already been accomplished.

Based upon the foregoing, the Ethics Commission grants the County Solid Waste Authority an exemption from the prohibition of W. Va. Code § 6B-2-5(d), allowing it to pay the \$4500 rental fee to its manager in these particular circumstances.

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