

ADVISORY OPINION NO. 2004-20

Issued On December 2, 2004 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Town Council asks for an exemption to permit it to contract with the spouse of the current Mayor to perform repair work on the town's water lines.

FACTS RELIED UPON BY THE COMMISSION

The town has been contracting with the same excavating contractor to perform repair work on the town's water lines for over 20 years. Recently, the contractor's spouse was elected Town Recorder and is now serving as acting Mayor.

There are no other excavating contractors in the town. The Town Council has contacted 4 excavating contractors in the area but they are either too busy or not interested in this particular work. The town pays \$45 per hour for these excavation services. These services are often needed on short notice when a leak or break is discovered. Based upon over 20 years of experience, this particular contractor is extremely familiar with the location of the water lines and shut-off valves, making it more cost-efficient to employ his business.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

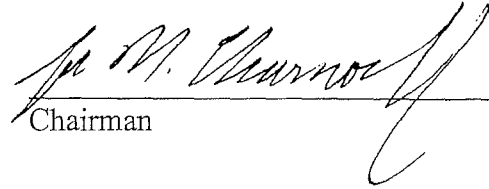
W. Va. Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that . . . no elected or appointed official or employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in . . . a contract which such official or employee may have direct authority to enter into, or over which he or she may have control. . . .

ADVISORY OPINION

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. This prohibition prevents a Town Council from entering into a lease agreement with the spouse of the Town Recorder and acting Mayor. However, the Ethics Commission has the power to grant an agency an exemption from this prohibition where it appears that the prohibition would cause the agency undue hardship.

The Commission finds that prohibiting the Town Council from contracting with the spouse of the Town Recorder and acting Mayor to perform repairs to the town's water system would result in an undue hardship. Therefore, the Ethics Commission grants the Town Council an exemption from the prohibition of W. Va. Code § 6B-2-5(d), thereby allowing the Council to continue contracting with the spouse of the Town Recorder or acting Mayor, consistent with other applicable laws, at the \$45 per hour rate specified in this opinion.

Should it become necessary to change the rates paid for these excavating services, the Town Council would need to request another waiver, providing specific information to establish that, absent such waiver, the town would incur an undue hardship.


Chairman