

**ADVISORY OPINION NO. 2004-14**

**Issued On August 4, 2004 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**OPINION SOUGHT**

A **State Board** asks for an exemption to permit it to contract with the current Executive Director of the Board to lease a storage unit.

**FACTS RELIED UPON BY THE COMMISSION**

The Board has limited office space and a limited budget. The Executive Director is the only full-time employee. Due to budget restraints, she is only paid to work thirty (30) hours a week. There are no permanent part-time employees. A temporary part-time employee was recently hired to work on a contract basis.

Due to the limited office space, certain filing cabinets are stored offsite in a storage unit. Previously, the Board leased a unit which was 10 X 10 and cost \$ 50.00 per month. It is five (5) miles from the Board's office space. There are eight (8) traffic lights between the Board's office and the storage unit. Depending upon traffic, a trip to the unit may take approximately twenty (20) minutes. The Executive Director traveled to the unit at least once a week. While more frequent trips would have resulted in better service to the public, time restraints prevented the Director from getting there more frequently.

The Board seeks to lease a storage unit from their executive director. The director and her husband own a storage unit which is approximately one (1) mile away from the Board's office. The cost is \$ 45.00 per month. The travel time to this unit is less than five (5) minutes. The new facility is also in the direction of the post office to which the Executive Director makes daily trips. At present, the Executive Director has allowed the usage of the unit for no charge. The Executive Director has chosen to essentially donate the use of the facility in order to eliminate the necessity of using valuable time to drive the longer distance to the other unit. The close proximity has also allowed more frequent filing which has resulted in greater efficiency.

The cost of the storage unit is five dollars (\$ 5.00) less per month than the cost of the other unit. The greatest benefit to the Board is that the Director will incur less travel time, which in turn allows her to devote more time to her responsibilities. While in all likelihood the Director would continue to allow the use of her space without charge, the Board believes that it is both fair and reasonable to compensate her for the space. It therefore seeks this waiver.

**CODE PROVISIONS RELIED UPON BY THE COMMISSION**

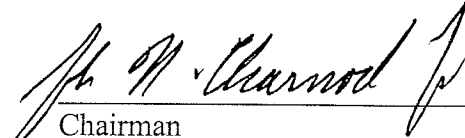
WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or employee or member of his or her immediate family or business with which he or she is

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 State Board from entering into a lease agreement with its Executive Director. 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.

Based upon the facts presented, the Commission finds that prohibiting the Board from leasing storage space from its Executive Director at a reasonable rate would result in an undue hardship to the State Board. Therefore, the Ethics Commission grants the Board an exemption from the prohibition of WV Code 6B-2-5(d) to allow it to lease the property described from its Executive Director.

  
Chairman  
8-5-04