

ADVISORY OPINION NO. 2002-20

Issued On December 5, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Board** asks for an exemption to permit it to contract with the Board's Executive Secretary to lease space for the Board's offices.

FACTS RELIED UPON BY THE COMMISSION

The State Board is currently renting office space from its Executive Secretary at an annual cost of \$4.39 per square foot, including utilities, janitorial services, and three parking spaces. Other commercial rental property in the area rents for \$7.00 to \$9.00 per square foot, without utilities and janitorial services.

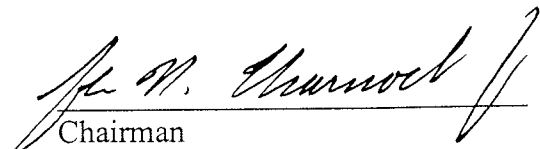
CODE PROVISIONS RELIED UPON BY THE COMMISSION

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 Secretary. 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 requiring the State Board to relocate and rent office space from someone other than its Executive Secretary would result in an undue financial hardship to the 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 office space from its Executive Secretary under the terms provided in its current lease.


Chairman