

ADVISORY OPINION NO. 99-18

Issued On July 8, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A Regional Planning and Development Council asks whether its annual audit may be performed by an accounting firm in which a Council Member is a partner.

FACTS RELIED UPON BY THE COMMISSION

The Council is comprised of representatives of five counties. Its eleven member executive committee is made up of the mayor of the largest municipality in each of the five counties, a County Commission representative of each county and one private sector member.

For several years one accounting firm has handled the Council's accounting work, which includes performing an annual audit. A partner in this firm has recently been elected mayor of one of the largest municipalities in one of the Council's five constituent counties.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

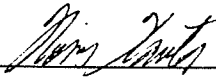
West Virginia Code 6B-2-5(d)(1) provides in pertinent part that... no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

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The Ethics Act prohibits public servants from having a personal financial interest in a public contract, purchase or sale that their public position gives them the power to award or control. The prohibition extends to any business in which the public servant has an ownership interest of more than ten percent. It is limited, however, by a legislative proviso which says that the prohibition does not "prevent or make unlawful the employment of any person with any governmental body...."

The Mayor's position on the Council gives him sufficient control over Council contracts to prohibit the accounting firm in which he is a partner from doing Council's accounting work, unless his firm's involvement is considered to fall within the employment proviso.

The Commission finds that the proviso is intended to exempt only agency employees. Paying someone to provide a service for a fee does not make them an employee. Neither the Mayor's accounting firm nor its partners would be employees of the Council, if the firm were to provide its accounting services. Therefore, its work is not covered by the employment proviso and it would be a violation for the firm to be paid to do the Council's work.



Chairman