

ADVISORY OPINION NO. 97-35

Issued on January 8, 1998 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Town Clerk

OPINION SOUGHT

May a Town acquire property needed for a road project by exchanging unused Town land for land owned by the Town Mayor?

FACTS RELIED UPON BY THE COMMISSION

A Town is building a large, multi-purpose Community Center. The only access to the Community Center is over a private driveway and a portion of a parking lot on property owned by the Mayor which he leases to a Corporation operated by his family. A public street over the Mayor's property will separate the Corporation from its customer parking and reduce the parking space available to customers.

The Town owns an undeveloped parcel of land adjacent to the Corporation which could serve as a parking lot to the Corporation. The Town Council would like to trade parcels of land and asks the Commission for an exemption if such a transaction would violate any provision of the Ethics Act. Both parcels of land have been appraised. The Town's lot is valued at \$45,000 and the Mayor's land is valued at \$115,000.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states 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

West Virginia Code 6B-2-5(d)(3) states in pertinent part that...where the provisions of subdivisions (1) and(2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make a written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

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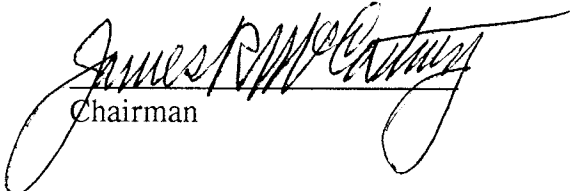
The Ethics Act prohibits public servants from being a party to, or having a financial interest in, any public contract over which their public position gives them authority or control. The Mayor of the Town has authority and control over all contracts involving the sale, purchase or trade of land for the Town. Therefore a strict application of the Act to this situation would prohibit the proposed exchange of properties.

However, WV Code 6B-2-5(d)(3) allows the Ethics Commission to grant exemptions to this provision if the interested governmental body can demonstrate that in a particular case the law would result in excessive cost, undue hardship, or other substantial interference with its operation.

In this case the Town Council seeks an exemption. The Commission finds that the Town Council has demonstrated the need for a public street to provide safe, permanent access to its Community Center. The Commission finds that it would create an undue hardship and substantially interfere with the Town's operations if the proposed transfer was prohibited by the application of the Act's ban against private interests in public contracts.

Therefore, the Commission grants an exemption so that the proposed transfer of property may take place. The exemption is granted with the understanding that the Mayor will take no part in the Council's deliberation and vote on the exchange of properties.

This exemption is based upon the unique facts of this case and may not be relied upon by any other public servant or governmental entity.


Chairman