

ADVISORY OPINION NO. 90-46

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MARCH 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

A public official

OPINION SOUGHT

Whether an exemption should be granted to allow City Bureau to contract with the City Mayor for rental property?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public official is a Mayor of a City. The City requires him to be a member of the Board of Directors of a Convention and Visitors Bureau. The Bureau currently leases space for its business. The lease expires April 1, 1990.

At the last meeting the Bureau decided to look for another location at the expiration of its lease. The Bureau decided to lease space for its offices in a building owned by the Mayor.

The rent for the office space owned is \$200 per month. The office has 1,000 square feet compared to 650 square feet where they are now located and paying \$480 per month. The new office has central heat and air conditioning; the present location does not.

The affected governmental body has submitted a written application to the Ethics Commission for an exemption citing excessive cost and undue hardship.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

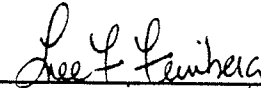
West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that no elected public official...may be a party to a contract with the governmental body over which he or she has direct authority...

West Virginia Code Section 6B-2-5(d)(3) states in pertinent part that where the provisions of subdivision (1)...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 written application to the ethics commission for an exemption from subdivision (1)...of this subsection.

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsections (d)(1) and (2) follows:

- a. The Mayor is an elected public official with direct authority (as a Board member) over the Convention and Visitors Bureau.
- b. The Mayor is a party to a contract with a governmental agency over which he has direct authority.
- c. Therefore, it is a violation of subsection (d)(1) of the Act for the Mayor to contract with the governmental agency over which he has direct authority.
- d. However, the affected governmental body has submitted a written application to the Ethics Commission for an exemption citing excessive cost and substantial interference.
- e. The Ethics Commission finds that excessive cost and substantial interference would result from the enforcement of the provisions in subsection (d)(1). Therefore, the Commission hereby grants the requested exemption.



CHAIRMAN