

ADVISORY OPINION NO. 90-110
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

The Mayor of a City

OPINION SOUGHT

- a. Whether it is a violation of the Act for a City to accept bids for the purchase of vehicles from a company which is owned by a City Council member?
- b. Whether it is a violation of the Act for a City to accept bids for the purchase of vehicles from a company which is owned by a County Commissioner?

OTHER FACTS RELIED UPON BY THE COMMISSION

The City is currently seeking bids on the purchase price on a new 3/4 ton pickup truck or dump truck. One eligible bidder is a company which is owned by a City Councilman. Another local eligible bidder is a company which is owned by a County Commissioner.

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...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 Section 6B-2-5(d)(2) states in pertinent part that...an elected...public official...or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this subsection is:

(A) An interest:

- (i) not exceeding ten percent of the partnership or the outstanding shares of a corporation;

or

West Virginia Code Section 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...municipality...or other governmental agency, the affected governmental body may make a written application to the Ethics Commission for an exemption.

ADVISORY OPINION

a. Pursuant to subsection 6B-2-5(d)(1), no elected public official may have an interest in the profits or benefits of a public contract when such official has direct authority or control over the letting of that contract.

The Commission finds that the city councilman is an elected public official with direct authority and control over the letting of the City's public contracts.

As the owner of the car dealership the City Councilman has more than a limited interest in the company which is bidding on a public contract.

Therefore, the Commission finds that it would be a violation of subsection 6B-2-5(d)(1) of the Act for a City to contract with a car dealership for the purchase of vehicles when that dealership is owned by a City Councilman.

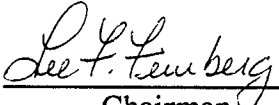
However, the Commission would note that pursuant to subsection 6B-2-5(d)(3) of the Act, the City may submit a written application to the Commission for an exemption if it can demonstrate that one of the following would occur from the enforcement of this provision:
the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a municipality.

It is the Commission's opinion that if the City Councilman's business was the lowest bidder as a result of a public bidding process and to give the bid to any other company would result in excessive costs to the City it would satisfy the requirements for an exemption allowed in 6B-2-5(d)(3).

b. Pursuant to subsection 6B-2-5(d)(1), no elected public official may have an interest in the profits or benefits of a public contract when such official has direct authority or control over the letting of that contract.

The Commission finds that although the County Commissioner is an elected public official with more than a limited interest in a company which is bidding on the County's public contract, he does not have direct authority or control over the letting of the City's public contracts.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) of the Act for a City to contract with a local car dealership for the purchase of vehicles when the owner of the dealership is a County Commissioner.



Chairman