

ADVISORY OPINION NO. 90-124
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 contract with a service station which is owned by the Mayor's wife's nephew?
- b. Whether it is a violation of the Act for a City to contract with a service station which is owned by a City Council woman but leased to a private individual?

OTHER FACTS RELIED UPON BY THE COMMISSION

A City contracts with a service station which is owned and operated by the Mayor's wife's nephew.

The City also contracts with a service station which is owned by a City Council woman but leased to a private individual.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states that a public official...may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person...

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected public official...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 Section 6B-2-5(d)(2) states in pertinent part that...an elected...public official...or a member of his or her immediate family 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

(ii) not exceeding thirty thousand dollars interest in the profits or benefits of the contract;

ADVISORY OPINION

a. The Commission finds that as the Mayor, the requestor has direct authority and control over the letting of the City's public contracts.

Pursuant to subsection 6B-2-5(d)(1) of the Act, an immediate family member of a public official may not have an interest in the profits or benefits of a public contract over which the public official has direct authority or control. A member of the Mayor's family is associated with a business which has an interest in the profits or benefits of a public contract.

For the purpose of this section, "immediate family member" is defined as a spouse residing in the individual's household, any dependent children and dependent parents.

The Mayor's wife's nephew does not fall with the guidelines established to define immediate family member by the Act. Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(d)(1) of the Act for the City to contract with a service station owned by the Mayor's wife's nephew.

The Commission would note that the Mayor should be mindful of subsection 6B-2-5(b)(1) which prohibits an elected public official from intentionally and knowingly using the prestige of his office for the private gain of another.

b. The Commission finds that the City Council woman has direct authority and control over the letting of the City's public contracts.

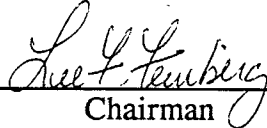
Pursuant to subsection 6B-2-5(d)(1) an elected public official may not have an interest in the profits or benefits of a public contract over which she may have authority or control.

As the owner of the service station, the City Council woman is associated with a business which has an interest in a public contract (i.e. between the lessee and the City). However, since the City Council member owns only the facilities and leases the service station to a private individual she has a limited interest in the profits or benefits of the public contract.

For the purpose of this section, "limited interest" is defined in part as one not exceeding thirty thousand dollars interest in the profits or benefits of a public contract.

Therefore, it would not be a violation of the Act for a City to contract with an individual who leases a service station which is owned by a City Council member.

The Commission would note that the City Council woman should be mindful of subsection 6B-2-5(b)(1) of the Act which prohibits a public official from intentionally and knowingly using the prestige of her office for her own private gain or that of another person.


Chairman