

ADVISORY OPINION NO. 90-135

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON AUGUST 2, 1990

GOVERNMENTAL BODY SEEKING OPINION

A City Manager

OPINION SOUGHT

Whether it is a violation of the Act for a City to contract for services from various businesses owned by City officials?

OTHER FACTS RELIED UPON BY THE COMMISSION

City Judge

The City maintains a Police Court which is presided over by a judge who is appointed by the City Council.

The current City judge has various business interests in the City, among them are a wrecker service, a service station, retail tire sales, a septic system sanitation service and a taxi service.

The City often purchases tires from a company which is owned by the judge, if the company submits the lowest bid proposal.

When a wrecker is needed the City selects wreckers on a rotating basis between 3 or 4 firms operating in the City. Each service receives an equal portion of the wrecker service business.

The City Sanitary Board personnel have rarely used the septic system sanitation service which is owned by the judge, and as a general rule use a different company.

City Attorney

The City attorney owns and operates a Fast Foto Business, which is used by the City for film development, film purchase and other photographic supplies. There is another photography company in the City which receives a larger portion of the City's business.

City Sanitary Board Member

Two members of the City's Sanitary Board also serve on the Board of Directors of a local Bank which the City utilizes for services such as checking, savings and investment accounts, but both members have stock ownership interest in the bank which is less than 10% of the outstanding bank shares.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 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: Provided, however, that nothing herein shall be construed to prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an elected or appointed...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

ADVISORY OPINION

The Judge

The Commission finds that the City judge as an appointed public official 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) for the City to contract with businesses owned by a City Judge, since he does not have direct authority or control over the letting of public contracts for the City.

City Attorney

The Commission finds that the City attorney as an appointed public official may have direct authority or control over the letting of the City's public contracts.

As the owner of the Fast Foto the City attorney has more than a limited interest in the profits or benefits of public contracts between his business and the City.

For the purpose of this section "limited interest" is defined as an interest not exceeding ten percent ownership in the business.

Therefore, it would be a violation of subsection 6B-2-5(d)(1) for the City to contract with a business owned by a City attorney, if he has direct authority or control over the letting of public contracts.

However, the Commission would note that subsection 6B-2-5(d)(3) provides that where the provisions of subsection 6B-2-5(d)(1) would result in undue hardship, excessive costs or other substantial interference with the operation of the municipality, the affected governmental agency may submit a written application to the Commission for an exemption.

City Sanitary Board Member

The Commission finds that the City Sanitary Board members have direct authority and control over the letting of public contracts by the Sanitary Board.

The Sanitary Board members also serve on the Board of Directors of a local Bank, but have only a limited interest in the profits or benefits of the public contract between the City and the Bank since they have less than 10% stock ownership interest in the Bank.

For the purpose of this section "limited interest" is defined as an interest not exceeding ten percent of the outstanding shares of stock issued by a corporation or an interest not to exceed \$30,000 in the profits or benefits of a public contract.

Therefore, it would not be a violation of subsection 6B-2-5(d)(1) for the City to contract with a Bank, in which the Sanitary Board Members have a limited interest.



Chairman