

ADVISORY OPINION NO. 90-164

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON OCTOBER 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A City Treasurer

OPINION SOUGHT

Whether an exemption should be granted to allow a City to contract for services and the purchase of equipment from a company which is owned by a City Council member?

OTHER FACTS RELIED UPON BY THE COMMISSION

A City Council member is the owner of a company which has performed various services for the City prior to his becoming a member of the City Council.

Snow Equipment

The Councilman's Company has the franchise for a certain brand of snow plows. The City has used these plows for over fifteen years and are very happy with the product. They would like to continue to purchase equipment and receive service from this Company. The next closest dealer in the surrounding area is 80 miles away. The City states that this would create undue hardship and excessive costs if they were required to travel 160 miles to get parts and services for their snow equipment. Also, it would be nearly impossible to get parts or work performed quickly. If a repair was needed during the snow season, this would leave the city short of a snow plow for at least two days. Therefore, the City is requesting an exemption to purchase, install and replace the snow equipment from the Councilman's Company.

Lights

In the past, approximately twice per year the City has contracted with the City Councilman's Company to perform repair work on the lights at the City's tennis courts. The light poles are very tall and the City's bucket truck will not reach them. The City has found it difficult to find a Company with a bucket truck large enough to reach the lights. Many of the companies with such a truck are not interested in the job since they are small jobs, normally just replacing the bulbs in the lights. Over the years the City has received excellent prices and services from the City Councilman's Company and would like to continue using the Company due to lower cost and convenience. After polling six companies in the surrounding area, the City has found only one other company which could provide the service. The City Councilman's company charges \$200.00 for the service, while the other company's estimated cost is \$325.00.

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...is associated may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he...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 ...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...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;

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...excessive cost, undue hardship, or other substantial interference with the operation of a ... municipality...or other governmental agency, the affected governmental body or agency may make a written application to the Ethics Commission for an exemption...

ADVISORY OPINION

Snow Equipment

The Commission has determined that it would be a violation of the Ethics Act for a City to contract for services and purchase equipment from a company owned by a City Council member.

Pursuant to subsection 6B-2-5-(d)(1) of the Ethics Act an elected public official or a business with which he is associated may not have more than a limited interest in the profits or benefits of a public contract over which the official has direct authority or control. The City Council member would have direct authority and control over the letting of public contracts by the City.

However, the affected governmental body has submitted a written application to the Ethics Commission for an exemption citing excessive costs and undue hardship. The City has used a certain brand of snow plow for over fifteen years. The next closest dealer in the surrounding area is 80 miles each way. The City states that this would create undue hardship and excessive costs if they were required to travel 160 miles to get parts and services for these snow plows.

The Commission finds that prohibiting the City from contracting for services and purchasing equipment from a Company owned by a City Council member would result in excessive costs and undue hardship to the City. Therefore, the Commission hereby grants the requested exemption based on excessive costs and undue hardship.

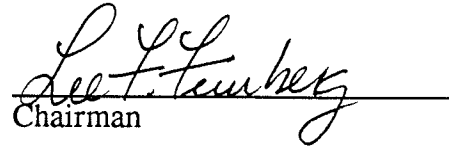
Lights

Also, the Councilman's Company performs repair work on the lights at the City's tennis courts. The light poles are very tall and the City's bucket truck will not reach them. The City has found it very difficult to find a Company with a bucket truck large enough to reach lights. Many of the companies with such a truck are not interested in the job since they are small jobs, normally replacing the bulbs in the lights. Over the years the City has received excellent prices and services from the City Councilman's Company and would like to continue using the Company due to cost and convenience. After polling six companies in the surrounding area, the City has found only one other company which could provide the service. The City Councilman's company charges \$200.00 for the service, while the other company's estimated cost is \$325.00.

The Commission finds that prohibiting the City from contracting for services and purchasing equipment from a Company owned by a City Council member would result in excessive costs and undue hardship to the City. Therefore, the Commission hereby grants the requested exemption based on excessive costs and undue hardship.

Voting

The Commission would remind the City Councilman of subsection 6B-1-2(b) of the Ethics Act which provides that a part-time elected official should seek to be excused from voting, recused from deciding or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter that has become "personal to him". The Commission considers a matter to be "personal" when the public official has any pecuniary interest either directly or indirectly in the matter, is affected in a manner which may influence his vote or would give the appearance of impropriety.


Chairman