

ADVISORY OPINION NO. 89-44

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

City councilman

OPINION SOUGHT

Whether it is a violation of the Act for the City to purchase goods from a paint and hardware store owned by a City councilman?

OTHER FACTS RELIED UPON BY THE COMMISSION

The councilman has been an at-large Councilman for the past nine (9) years. He has owned a business since August, 1971. He has been selling goods to the city since that time. He has never bid on anything sealed or open. General goods are sold to the city on a daily basis from his store. During the last fiscal year approximately \$7,000 worth of goods were purchased from the store.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 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 with the governmental body over which he or she has direct authority or with which he or she is employed...

West Virginia Code 6B-2-5(d)(3) states 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).

ADVISORY OPINION

The councilman is a public official whose business is a party to and has an interest in the profits and benefits of a contract with the governmental body over which he has direct authority and, therefore, is in violation of West Virginia Code 6B-2-5(d)(1).

However, the city has applied for an exemption pursuant to West Virginia Code 6B-2-5(d)(3) and has demonstrated undue hardship or other substantial interference with its operation as a result of the prohibitions in subsection 5(d)(1) by showing that this store carries certain items not normally stocked by any other hardware retailers in the community and has shown a willingness to special order items for the city where other merchants have not done so. Also, this store is the only one that will assist the City staff in locating specific, unusual and one-of-a kind items not generally stocked in a hardware store, and that the discontinuance of purchasing from this specific store will cause inconvenience and additional cost to the City.

Therefore, the Commission hereby grants an exemption to the City to purchase goods, which are unusual, unique, one-of-a kind, have to be specially ordered or where this is the only store in the community where the item can be located.

  
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Chairman