

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 7, 1989

GOVERNMENTAL BODY SEEKING OPINION

Mayor of a City

OPINION SOUGHT

Whether a city should be granted an exemption to purchase a truck from a dealership owned by a city council member?

OTHER FACTS RELIED UPON BY THE COMMISSION

During the city/county cleanup in 1985, a local automobile dealership loaned the city a truck. A year later, in 1986 the owner of the dealership was elected to city council. The reason for the loan was because the city was unable to purchase a vehicle at that time due to its poor economic conditions. The original plan was that the city would use the truck for only a few weeks, but the city kept the vehicle and has been using it for more than four years.

The Mayor is now in the process of trying to decide what to do with the truck. Her preference is to keep the truck and have the city pay for it. If the Mayor decides not to keep it, then the city should pay something for the use of the truck for the last four and a half years.

Although the Ethics Commission may allow this exemption, the City still has a bidding requirement for purchases over \$5,000.00. Therefore, it may be necessary for the City to use its bidding requirement to pay for the truck, which the Mayor believes may be worth as much as \$9,000.00.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that no elected or appointed 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 with the governmental body over which he...has direct authority or with which he or she is employed.

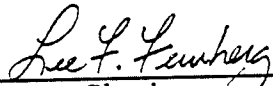
West Virginia Code Section 6B-2-5(d)(3) states that where the provisions of subdivision (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school

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board or other governmental agency, contact the ethics commission for
or agency may make written application to the ethics commission for
an exemption from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

It is the Commission's finding that to allow the City to purchase or pay for the use of a truck from a City council member's auto dealership would constitute a violation of subsection (d)(1).

However, the City is invited to and could make further written application to the Commission for exemption if it could demonstrate a substantial interference, undue hardship, excessive cost, or loss of quorum by the City if it is not allowed to purchase the truck from the City council member's business or to pay for the use of truck during the several year period.



Chairman