

ADVISORY OPINION NO. 89-120

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Mayor of a Town

OPINION SOUGHT

Whether it is a violation of the Ethics Act for the Town Police Department to obtain wrecker services from a company owned by the Town mayor?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Mayor of the Town owns a car dealership and a wrecker service. This is the only wrecker service located in the Town which could service the Town Police Department.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected public official...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...

West Virginia Code 6B-2-5(d)(3) states in pertinent part that... where the provision of subdivision (1) 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 written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of West Virginia Code 6B-2-5(d)(1) and (3) follows:

1. The Mayor is an elected public official.
2. The Mayor has more than a limited interest in a business which is contracting with the governmental agency over which he has direct authority.
3. For the purpose of this section, limited interest is defined as an interest not exceeding ten percent of the outstanding shares of a corporation or thirty thousand dollars whichever is the lesser.
4. Therefore, it would be a violation of subsection (d)(1) of the Act, without exemption, for the governmental agency to contract to provide wrecker services from a business owned by the Mayor.
5. However, the affected governmental agency may make a written application to the Ethics Commission for exemption if it can show that excessive cost, undue hardship or other substantial interference would occur.



Chairman