

ADVISORY OPINION NO. 89-125
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JANUARY 19, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Prosecuting Attorney on behalf of a County Commissioner

OPINION SOUGHT

Whether an exemption should be granted to allow certain County Departments to utilize automobile service facilities owned by a County Commissioner?

OTHER FACTS RELIED UPON BY THE COMMISSION

A garage owned by a County Commissioner is the only authorized dealership located within the County. The garage services vehicles owned by the County Commission and operated by the County Sheriff's Department and various other emergency departments.

The affected governmental body has submitted a written request for an exemption, citing undue hardship and substantial interference. This is the only authorized dealership in the County, and to require the County agencies utilizing this service to go outside the County would result in increased time that the County Emergency vehicles would be out of service. The County also states that this company has the only reliable twenty-four hour towing facilities in the area. There is another towing service in the County but it has not proven to be dependable.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected 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 or she has direct authority...

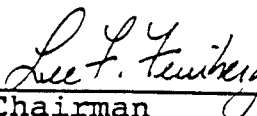
West Virginia Code 6B-2-5(d)(2) states in pertinent part that... an elected public official...or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser...

West Virginia Code 6B-2-5(d)(3) states in pertinent part 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 county...or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption...

ADVISORY OPINION

An analysis of the facts presented and the pertinent statutory provisions of subsection (d)(1) and (2) follows:

1. The County Commissioner is an elected public official.
2. The business in which he has an interest is currently contracting with the governmental agency over which he has direct authority.
3. Since the County Commissioner is the sole owner of the company he has more than a limited interest.
4. For the purpose of this section, limited interest is defined as ten (10) percent of outstanding shares of stock issued by a corporation or thirty thousand dollars whichever is the lesser.
5. Therefore, it would be a violation of subsection (d)(1) for the County, without exemption to continue to contract for automobile and wrecker services with a company owned by the County Commissioner.
6. However, the affected governmental body has submitted a written request for exemption from subsection (d)(1) citing undue hardship and substantial interference, because this garage is the only authorized dealership within the County.
7. The Commission finds that undue hardship and substantial interference would result if the provision of subsection (d)(1) of the Act was to be enforced. Therefore, the Commission hereby grants the requested exemption.


Chairman