

PROPERTY EXEMPTION NO. 2012-01

Issued On October 4, 2012 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

Michael E. Scragg, a public employee, requests an exemption to continue leasing a home from an agency vendor.

FACTS RELIED UPON BY THE COMMISSION

Mr. Scragg is the Chief Investigator for the State of West Virginia Office of the Chief Medical Examiner. He rents a home in Poca, West Virginia from Chad Harding. Mr. Harding is the owner of Tri-State Mortuary Service. After Mr. Scragg began renting the home in approximately 1998, Tri-State Mortuary Service became a vendor of the Office of the Chief Medical Examiner. This business transports bodies for the Office.

At or around the time Tri-State became a vendor of that Office, the Chief Medical Examiner, Jim Kaplan, M.D., sought advice from the Ethics Commission staff in regard to whether Mr. Scragg could continue renting a house from Mr. Harding.

Dr. Kaplan was advised that, in accordance with the plain language in the Ethics Act, Chief Investigator Scragg could lease property from Tri-State Mortuary Service or Mr. Harding; however, he could not lease property to this business or its owner. The staff advice further stated that Mr. Scragg's supervisor, not Mr. Scragg, should make regulatory decisions affecting Tri-State, or resolve any disputes which may arise.

After Dr. Kaplan/Scragg obtained the staff opinion, in 2005 the law changed. Specifically, the Ethics Act was amended to prohibit public servants from leasing property from regulated persons. Then, in 2008 the Act was amended to expressly apply this same rule of law to public servants who exercise control over vendors.

Mr. Scragg was unaware of the change in the law. He recently contacted the Ethics Commission staff to seek confirmation of the advice previously rendered. At that time he was advised that the law has since changed; hence, he would need to seek a property exemption. Mr. Scragg promptly proceeded to submit his request for an exemption.

Mr. Scragg pays \$500.00 per month in rent for the two bedroom house he rents from Mr. Harding. He is responsible for his own utilities. There has been no rent increase since the time he began renting the house.

He states that if he is forced to stop renting this house, it will cause a hardship on his family as they have lived there for numerous years. He states that his son is a freshman at the high school and it could force his family to move out of the district. He also states that the house is located approximately five (5) miles from his mother-in-law's house and that she is bedridden which requires his wife to make numerous trips throughout the course of the day to care for her.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code § 6B-2-5(h) reads in relevant part:

(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

...

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.


ADVISORY OPINION

The Ethics Commission must determine whether the Requester will be adversely affected if he is required to move. The Commission finds that based upon the facts presented, he would be adversely affected as it is the home where he has raised his family and it is situated close to his ailing mother-in-law. As such, he may continue to rent the home, but limitations apply.

First, all decisions relating to this vendor must be made by the Chief Medical Examiner or his designee who may not be Mr. Scragg's subordinate. For example, the Chief Medical Examiner or his designee must review and approve all payments to this vendor and independently investigate any allegations against it. Additionally, the Chief Medical Examiner or his designee must review the contract with the vendor to ensure it was properly let.

Second, Mr. Scragg must provide a copy of this exemption to the Chief Medical Examiner within 2 business days of receiving the same.

The Commission notes that exemptions must be granted on a case-by-case basis. Therefore, this opinion is limited to the facts and circumstances of this particular case, and may not be relied upon as a precedent by other persons or entities.



Jonathan E. Turak, Acting Chairperson