

ADVISORY OPINION NO. 89-30

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON NOVEMBER 2, 1989

GOVERNMENTAL BODY SEEKING OPINION

Mayor of City

Opinion Sought

1. Must the city travel 9 miles to another store to buy parts when the only supplier in the city is owned by the mayor?
2. Must the city cease to do business with the only financial institution in the city because the mayor is the chairman of the board?
3. Is it a conflict if the city purchases power from the only power source available because the mayor is a member of the Board of Directors?
4. Is a council person in violation of the Act because he is the owner of a wrecker service which is used to remove vehicles whose drivers are apprehended for a violation of the law; and who sells vehicle fuel to the Fire Department and Ambulance service during the night hours?

Other Facts Relied Upon By The Commission

The mayor is the president of a corporation that operates a hardware, plumbing supplies, auto parts, and building materials home center. Many items are not available anywhere else in the city and his store is the only supplier in emergency situations. The mayor is also the chairman of the board of the only bank in the city as well as a member of the board of directors of the only power company in the city.

He is frequently called out at night to get plumbing parts for the water department if a water main breaks.

There is a council person who is the owner of a wrecker service that services the city's law enforcement and fire departments.

Pertinent Statutory Provisions Relied Upon By The Commission

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

West Virginia Code Section 6B-2-5(d)(3) states where the provisions of this subsection would result 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 a written application to the Ethics Commission for an exemption.

ADVISORY OPINION

1. Since the mayor is a public official neither he, nor a business with which he is associated may be a party to a contract with the governmental body over which he has direct authority or is employed.

However, the affected governmental body may make written application for exemption under West Virginia Code section 6B-2-5(d)(3) if it could demonstrate a loss of quorum, excessive cost, undue hardship, or other substantial interference with the city's operation.

2. The mayor as chairman of the board of a bank has an interest in the bank and the bank is a "business which he is associated with" for purposes of subsection 5(d)(1). A person shall not be considered as having an interest in a business which is the contractor on a public contract if that person has a limited interest; which is an interest not exceeding ten percent of the partnership or outstanding shares of the corporation or thirty thousand dollars, whichever is less. If, however, the mayor does not have a limited interest then the city may still make written application for exemption under West Virginia Code Section 6B-2-5(d)(3).

3. The mayor as a member of the board of a power company has an interest in the company and the company is a "business which he is associated with" for purposes of subsection 5(d)(1). A person shall not be considered as having an interest in a business which is the contractor on a public contract if that person has a limited interest; which is an interest not exceeding ten percent of the partnership or outstanding shares of the corporation or thirty thousand dollars, whichever is less. If, however, the mayor does not have a limited interest then the city may still make written application for exemption under West Virginia Code Section 6B-2-5(d)(3).

4. A council member is a public official within the meaning of the statute and therefore he and any business he is associated with is prohibited from being a party to a contract or having 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 is employed. However, the affected governmental body may make written application for exemption pursuant to subsection 5(d)(3) if it can demonstrate excessive cost, undue hardship, or other substantial interference with the city's operation.

Fred H. Caplan
Vice-Chairman