

ADVISORY OPINION NO. 92-52

ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 7, 1993

GOVERNMENTAL BODY SEEKING OPINION

The Mayor of a City

OPINION SOUGHT

Is it a violation of the Ethics Act for a City Council member to act as the insurance agent administering the City's policy?

FACTS RELIED UPON BY THE COMMISSION

The City is planning to change its current insurance from a private carrier to the State Board of Risk, which will require the appointment of an agent for the policy. The appointed agent could receive up to an eight percent fee for servicing the account. The precise fee is subject to agreement between the City and the agent chosen. This agreement can be reached by negotiation or public bid.

There are several agents in the area who could serve as the City's insurance agent. However, a City Council member has asked to be appointed since he is not paid for his service on the City Council and he lives within City limits.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official...or member of his...immediate family or business with which he...is associated may be a party to or have an interest in the profits or benefits of a contract which such official...may have direct authority to enter into, or over which he...may have control...

West Virginia Code §6B-2-5(d)(2) states in pertinent part that...a public official...or a member of his...immediate family or a business with which he...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 subsection is:

(A) An interest:

(i) not exceeding ten percent of the partnership or the outstanding shares of a corporation; and

(ii) not exceeding thirty thousand dollars interest in the profits or benefits **of the contract**;

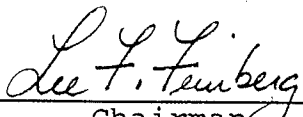
ADVISORY OPINION

Interest in Public Contracts

Pursuant to WV Code §B-2-5(d)(1), a public official may not have more than a limited interest in the profits or benefits of a public contract over which he has direct authority or control. For the purpose of this section a "limited interest" is defined as an interest not exceeding ten percent of the outstanding shares of stock of a corporation or an interest not exceeding thirty thousand dollars interest in the profits or benefits of the public contract.

Based on the facts as originally presented by the requestor, it appears to the Commission that the City Council member likely has more than a ten percent ownership interest in the business which would be contracting with the City. Therefore, it would be a violation of WV Code §6B-2-5(d)(1) for the City Council member to contract as the service agent for the City's insurance policy.

The Commission notes that if any interested individual has facts which may alter this conclusion, he or she may seek an advisory opinion from the Commission. However, any different or additional facts would also require the Commission to consider the other provisions of the Ethics Act which were not necessary to the resolution of the current question. For example, the Ethics Act's prohibition against the use of public office for private gain, which is established in WV Code §6B-2-5(b)(1), might also prevent this contract.


Chairman