

ADVISORY OPINION NO. 2000-42

COPY

Issued On January 4, 2001 By The
WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A City asks for an exemption to permit it to contract with a member of the City's Council for the purchase and installation of heating and cooling equipment.

FACTS RELIED UPON BY THE COMMISSION

The City is constructing additional office space and a member of Council has offered to provide the necessary equipment at his company's cost and provide free labor for its installation. The City estimates that accepting the Council member's offer will save the City approximately \$5,400. The City asks for an exemption to permit it to accept the offer.

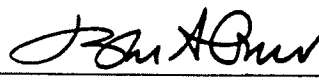
CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control ...

ADVISORY OPINION

The Ethics Act prohibits public servants from being a party to or having a financial interest in a public contract which they have the power to award or control. This prohibition prevents a City from doing business with a company owned by one of its Council members. However, the Ethics Commission has the power to grant an agency an exemption from this prohibition where it appears that the prohibition would cause the agency undue hardship.

The Commission finds that the loss of \$5,400 savings in the construction project would constitute an undue hardship to the City. Therefore, the Ethics Commission hereby grants the City an exemption from the prohibition of WV Code 6B-2-5(d) to allow it to accept the Council member's offer.


Chairman