

ADVISORY OPINION NO. 89-81

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

President of a County Commission

OPINION SOUGHT

Whether it would be a violation of the Act for the County Commission to continue to deposit money in a bank where a County Commissioner is a Board of Director?

FACTS RELIED UPON BY THE COMMISSION

A County Commissioner is a Board of Director at a local bank. The Commissioner is the owner of over 3,000 shares of bank stock valued at \$26.00 per share. The County Commission has refrained from making any interest bearing deposits in the bank, but would like to divide County money between the two local banks if it is not a violation of the Ethics Act.

STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no elected...public official or business which he is associated with...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 a ...public official... 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 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 state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

An analysis of the facts presented and pertinent statutory provisions of West Virginia Code 6B-2-5(d)(1) and (2) follows:

1. The County Commissioner is an elected public official.
2. The County Commissioner has an interest in a Bank which is contracting with the governmental agency over which he has direct authority.
3. The Commissioner has more than a limited interest in the Bank.
4. Limited interest is defined as an interest not exceeding ten percent (10%) of the outstanding shares or thirty thousand dollars whichever is the lesser.
5. Therefore, it would be a violation, without exemption, of subsection (d)(1) of the Ethics Act, for the County Commission to contract with the bank.
6. However, should the provisions of this subsection result in a loss of quorum, undue hardship or other substantial interference, the County Commission may make a written application to the Ethics Commission for an exemption.

Lee F. Lemberg

Chairman