

## **ADVISORY OPINION NO. 98-26**

**Issued On November 5, 1998 By The**

### **WEST VIRGINIA ETHICS COMMISSION**

#### **OPINION SOUGHT**

A Senior Vice President of a Bank asks whether it would be a violation of the Ethics Act or WV Code 61-10-15 for him to serve on a county Economic Development Authority?

#### **FACTS RELIED UPON BY THE COMMISSION**

A Senior Vice President of a Bank has been asked to serve as a member of a county Economic Development Authority. The Bank frequently loans funds to the Authority to finance its economic development projects. The Requester asks if his service on the Authority will prevent the Bank from continuing to act as lender to the Authority.

#### **PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(d)(1) provides in pertinent part that ... no elected or appointed public official ... or business with which he or she 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 or she may have control: ...

West Virginia Code Section 61-10-15 states in pertinent part that ... It shall be unlawful for...any member of any county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

WV Code 7-12-4(b) states in pertinent part that ... Any person employed by, owning an interest in, or otherwise associated with a public utility company ... or bank ... may serve as a board member and shall not be disqualified from serving as a board member because of conflict of interest as defined in ... WV Code 61-10-15 ... and shall not be subject to prosecution under the provisions of said section when the violation is created solely as a result of his or her relationship with the bank or public utility. This member must recuse himself or herself from board participation regarding the conflicting issue as provided for in section five ... of this article.

WV Code 7-12-5(b) states in pertinent part that ... Whenever a person associated with a public utility or bank ... has a conflict of interest between the board and that public utility or bank, then he or she must recuse himself or herself from any vote, discussion or other activity associated with the board or its members that creates the conflict of interest.

## ADVISORY OPINION

The Ethics Act prohibits public servants from having a personal financial interest in a public contract, purchase or sale which their public position gives them the authority to award or control. The prohibition extends to the public servant's spouse, dependent children and dependent parents and any business in which any of them have an ownership interest greater than ten percent. The prohibition does not apply to a business by which a public servant is employed, in the absence of a ten percent ownership interest.

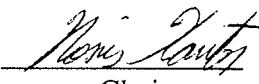
Assuming the Requester does not have an ownership interest in the bank of more than ten percent, it would not be a violation of the Ethics Act for him to serve on the Authority while the Bank by which he is employed continued to act lender to the Authority. He should not, however, vote as an Authority member on matters affecting the Bank by which he is employed.

WV Code 61-10-15, a criminal misdemeanor statute, applies a similar, but stricter standard of conduct. It prohibits certain county officials, including the members of a county Economic Development Authority's board, from having a direct or indirect pecuniary interest in a public contract over which their public position gives them voice, influence or control.

This prohibition applies to contracts, purchases and sales between the public servant's public agency and a business with which the public servant is associated as an owner **or** employee. However, in 1996 an amendment to WV Code 12-7-4(b) created an exemption for county Development Authority members who would otherwise be subject to this prohibition because of their association with a bank or public utility.

This section provides that individuals associated with a bank or public utility are not disqualified from serving because of a conflict of interest as defined in WV Code 61-10-15, or subject to prosecution for a violation of it, if they have been recused from consideration of the matter involving the bank or utility with which they are associated.

It would not be a violation of WV Code 61-10-15 for the Bank to act as lender to the Authority while the Requester serves on the Authority, if he were recused from board participation regarding matters relating to business with the Bank, as provided in WV Code 7-12-5(b).

  
Chairman