

ADVISORY OPINION NO. 89-85

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

Member of an Economic Development and Authority

OPINION SOUGHT

Whether it is a violation of the Act for an Economic Development and Tourism Authority (hereafter referred to as Development and Authority) to deposit money in a Bank where a member of that Authority and his wife own stock?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Development and Authority member's wife is a Director of a Bank and owns in excess of \$30,000 of bank stock issued by the Bank Holding Company that owns the Bank. The Development and Authority member owns a value less than \$30,000.00 and has less than a 10% interest.

For several years the Bank has bid on turnpike funds via a competitive method and has been successful in obtaining funds by placing the high bid. In addition the Bank receives toll revenues daily from the Authority and is one of three depositories of the Development and Authority.

This banking relationship was negotiated with the bank by the General Manager several years ago. It requires the bank to receive, count and verify tolls daily and then deposit these funds into the Development and Authority's account, the bank is allowed to keep certain balances interest free for the expense they incur in handling the account. All balances over that amount go into a daily Sweep Account that pays interest to the Development and Authority.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no... 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 with the governmental body over which he...has direct authority...

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... an...appointed public official or a member of his or her 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...shareholder...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-1-3(d) states in pertinent part that "immediate family", with respect to an individual, means a spouse residing in the individual's household...

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), (2) and (3) follows:

1. Since the member is appointed by the Governor to the Development and Authority, he is an appointed public official.
2. The member's spouse has more than a limited interest in the Bank since she owns in excess of thirty thousand dollars of bank stock.
3. For the purpose of this section, immediate family member is defined as, a spouse residing in the individual's household.
4. The Development and Authority has a public contract with the Bank.
5. The member has direct authority over the Development and Authority.
6. Therefore it would be a violation of subsection (d)(1) of the Ethics Act for the Development and Authority to contract, without exemption, with the Bank when the member's spouse possesses more than a limited interest in the Bank.

7. The Development and Authority may make a written application for an exemption from this subsection, if it can show this subsection would result in the loss of a quorum, in excessive cost, undue hardship, or other substantial interference with the operation of the Agency.

P. F. Leuberg

Chairman