

## Advisory Opinion 2025-02

Issued on February 6, 2025, by

The West Virginia Ethics Commission

### Opinion Sought

The **Executive Director of a County Farmland Protection Board** asks whether a potential Board member who is an employee of a local bank would need to recuse herself/himself from matters that come before the Board involving a customer of the bank.

### Facts Relied Upon by the Commission

The purpose of the Voluntary Farmland Protection Act, W. Va. Code § 8A-12-1, *et seq.*, is to sustain farming communities, control urban expansion, and protect agricultural land. The Act allows county commissions to create county farmland protection boards (Board). W. Va. Code § 8A-12-2. These Boards are authorized to purchase conservation easements on farmlands, which prevents the development of the land for most purposes unrelated to farming. *Id.* A Board may compensate landowners for the difference between the fair market value of the land and its value for agricultural production. The Board must approve the participation of individuals in this and other of the Board's programs.

The potential member of the Board is employed as an assistant vice president and the manager of a local branch of the bank. Many landowners who apply to participate in the Board's programs are customers of the bank. Some participants have had direct interaction as a bank customer with the potential Board member in question. The Board has no contractual relationship with the bank at which the potential Board member works.

### Provisions Relied Upon by the Commission

[W. Va. Code § 6B-2-5\(b\)\(1\)](#) states, in relevant part:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection.

[W. Va. Code § 6B-2-5\(d\)](#) states, in pertinent part:

*Interests in public contracts.* - (1) In addition to the provisions of §61-10-15 of this code, no elected or appointed public official or public 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 the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control . . . .

[W. Va. Code R. § 158-8-4](#) states, in relevant part:

4.1. The prohibition of W. Va. Code § 6B-2-5(d) against being a party to or having an interest in the profits or benefits of a contract applies only to public contracts involving a governmental body or agency.

4.2. Public officials or public employees or members of their immediate family are considered to be "associated" with a business if they or their immediate family member are a director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

[W. Va. Code § 6B-2-5\(j\)](#) states, in relevant part:

(1) Public officials. . . may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

[W. Va. Code § 61-10-15\(a\)](#) states in pertinent part:

It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control. . . .

## **Advisory Opinion**

County officials, including members of county farmland protection boards, may not have a pecuniary interest in any contract over which they may have direct authority or any voice, influence, or control. W. Va. Code §§ 6B-2-5(d) and 61-10-15(a). The Ethics Act also prohibits a public official from voting on a matter that the official or a business with which the official is associated has a financial interest. W. Va. Code § 6B-2-5(j).

### *Prohibited interest in public contract*

In [Advisory Opinion 2024-10](#), the Commission held that W. Va. Code § 61-10-15 prohibited a county farmland protection board from purchasing a conservation easement from a member of that board. The Commission reasoned that the board member held a financial interest in the easement on his private property and, as a farmland protection board member, he had voice, influence, or control over the Board's decision to purchase the easement. However, this situation is different. Here, the potential Board member does not have a prohibited financial interest in the bank where he/she works. According to [W. Va. Code R. § 158-8-4](#), the Board member is not associated with the bank because he/she is only an employee of the bank. Therefore, the Farmland Board would not be prohibited from contracting with the bank's customers if an employee of the bank is appointed to the Farmland Board.<sup>1</sup>

This finding is supported by [Advisory Opinion 1994-37](#) which involved a similar situation. A director of a county area development corporation worked for a private company. This company had customers who also happened to have contracts with the county area development corporation. The Commission held that neither W. Va. Code § 61-10-15 nor W. Va. Code § 6B-2-5(d) prohibited the director from working for the private company and the development corporation. The fact that some individuals had contracts with both the county area development corporation and the private company did not create a prohibited pecuniary interest of the director in the contracts between those individuals and the county area development corporation.

**The Commission holds that the Farmland Protection Board would not be prohibited from contracting with the bank's customers if an employee of the bank is appointed to the Farmland Board.**

### *Voting on matters involving customers of the bank*

W. Va. Code § 6B-2-5(j)(1)(A) prohibits a public official from voting on a matter involving the public official, his or her immediate family, or business with whom the public official or a member of his or her immediate family is associated. The definition of "associated

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<sup>1</sup> This would not necessarily be true with regard to contracts between the Board and the bank for whom the potential member works. As indicated in the recitation of facts, no such contractual relationship between the Board and the bank exists. Accordingly, it is not necessary to determine, for instance, whether the salaried employee exception defined in W. Va. Code § 61-10-15(e) or the part-time appointed official exception in W. Va. Code § 6B-2-5(d)(1) would apply to the potential Board member.

with” is broader under the voting provision of the Act than it is under the prohibited contract provisions of the Act. As for voting, it is clear that the prospective Board member is associated with the bank for whom he or she is employed. See [W. Va. Code § 6B-2-5\(j\)](#). Therefore, the potential Board member could not vote on Board matters in which the bank has a financial interest.

However, the potential Board member is not associated with a landowner just because the landowner is a customer of the bank. The situation in the present opinion is similar to that addressed in [Advisory Opinion 2021-21](#). In that advisory opinion, a member of a county board of education owned a construction company. He asked whether he must recuse himself from matters that came before the board of education affecting the financial interests of the private customers of his construction company. In determining whether the board of education member was associated with the complex, the Commission held:

The term “associated” with a business is defined by W. Va. Code § 6B-2-5(j) as “a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.” . . . The statutory language enumerates an exclusive list of the ways in which an individual may be “associated” with a business.

As the board of education member did not have an ownership interest in the complex, was not an official of the complex, nor was he an employee of the complex, the Commission held that he was not associated with the complex. The fact that he, through his construction company, did business with the complex did not make him “associated” with the complex for purposes of the voting provision of the Act. Accordingly, the board member did not have to recuse himself from issues that came before the board of education involving the complex. The same is true in the present advisory opinion. The prospective Board member of the county farmland protection board has no ownership or employment interest with these landowners that would meet the definition of “associated” with said landowners.

The only exception is when the bank has a financial interest in the farmland protection board’s programs. For example, if a landowner had borrowed money from the bank and the bank held a mortgage on the land. The bank would have to agree to the grant of a conservation easement on the land, which would restrict the use of the land to agricultural purposes and potentially lower the value of the land. The bank may insist upon alteration of the terms of the mortgage. This would give the bank a financial interest in the transaction between the Board and the bank customer. As the potential Board member is an employee of the bank, he would be associated with the bank for voting purposes under W. Va. Code 6B-2-5(j). He or she would have to recuse himself/herself from the discussion and vote on that matter.

**The Commission holds that the prospective Board member of the county farmland protection board would not have to recuse himself/herself from issues involving customers of the bank for whom the prospective member works pursuant to W. Va. Code 6B-2-5(j) unless the matter on which the customer dealt with the bank involved the transaction between the customer and the Board. In the latter case, the prospective Board member would have to recuse himself from the discussion and vote on the matter.**

*This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render the Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11, and does not purport to interpret other laws or rules.*

*In accordance with W. Va. Code § 6B-2-3, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.*

/s/ Robert J. Wolfe  
Robert J. Wolfe, Chairperson  
West Virginia Ethics Commission