

ADVISORY OPINION NO. 99-03

Issued On February 4, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Regional Planning and Development Council Member** asks whether the provisions of WV Code 61-10-15 apply to such "regional" planning and development agencies.

FACTS RELIED UPON BY THE COMMISSION

The Council Member has a business association with a bank which may have occasion to do business with the Regional Planning and Development Council with which he serves. He asks whether WV Code 61-10-15 prevents the Council from doing business with a bank with which he is associated as owner, director or employee.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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, or for any county or district officer...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.

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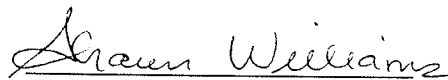
WV Code 61-10-15 is a criminal misdemeanor statute which prohibits certain county public servants from having a private financial interest in public contracts, purchases or sales over which their public position gives them a degree of authority or control. This statute states that it applies to certain specific county positions and includes those who are members of any "county or district board" and any "county or district officer".

The Commission believes that the members of a "regional" council, comprised of representatives of all municipalities and counties within the region, are not subject to the provisions of WV Code 61-10-15 merely by virtue of their council membership.

The Commission further believes that county personnel who serve on such "regional" councils and are otherwise subject to WV Code 61-10-15 are not subject to its provisions in regard to their activities on behalf of the regional council. For example, an elected county commissioner who served ex-officio on the council would not be at risk of a violation simply because of his association with a bank doing business with the regional council.

Therefore, the Ethics Commission finds that it would not be a violation of WV Code 61-10-15 for a member of a regional economic development council to be an owner, director or employee of a bank doing business with the council.

The Commission would note that the Ethics Act also contains a prohibition against public servants having a personal financial interest in a public contract. That prohibition, WV Code 6B-2-5(d), does apply to the situation presented by this request and requires that council members must be recused from any consideration by the council of matters affecting a bank with which they have a financial association.


Vice Chairman