

ADVISORY OPINION NO. 90-68

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

The Mayor of a City

OPINION SOUGHT

Whether it is a violation of the Act for a City to contract with a Bank where a City Council member has a limited interest in the Bank's Holding Company?

OTHER FACTS RELIED UPON BY THE COMMISSION

A City Councilman is employed as an assistant Vice-President at a Bank. He is not involved in the policy making process at the Bank.

The Bank is owned by a Holding Company. The City Councilman owns over \$30,000 in stock in the Holding Company but, that constitutes less than 1/2 of 1 percent of the issued stock. The councilman is not an officer nor employee of the Holding Company.

The City deposits funds in three Banks. The Bank that employs the City Councilman is the closest and most convenient Bank to City Hall. All three Banks pay business and occupation tax and participate in the purchase of bonds that finance the City-County Complex. The spreading of City funds among the three Banks provides added security to the responsibility of safeguarding the public funds.

Also, the City would incur an additional cost for new checks and substantial interference with the operation of City government if the deposits had to be moved to another institution.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected...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 or employee may have direct authority to enter into, or over which he or she may have control...

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an elected...public official...or a business with which he or she is associated 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 subsection is:

(A) An interest:

(i) Not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) not exceeding thirty thousand dollars interest in the profits or benefits of the contract...

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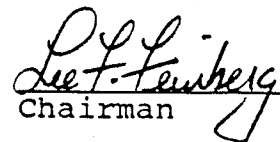
The Commission finds that as an elected City Councilman, the requestor may have direct authority to enter into or may have control over the City's banking contracts.

However, pursuant to subsection 6B-2-5(d)(2), the Councilman has a limited interest in the benefits or profits of the public contract between the City and the Bank.

For the purpose of this section limited interest is defined as an interest not exceeding 10% of the outstanding shares of stock issued by a corporation or an interest less than \$30,000 in the profits or benefits of a public contract.

Although the City Councilman owns in excess of \$30,000 stock in the Bank's Holding Company that is considered a limited interest since the councilman does not have a \$30,000 interest in the profits or benefits of the public contract between the Bank and the City.

Therefore, the Commission finds that it would not be a violation of subsection 6B-2-5(d)(1) of the Act for the City to contract with a Bank in which a City Councilman has a limited interest.


Chairman