

ADVISORY OPINION NO. 90-77

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

An Attorney on behalf of a Village Mayor

OPINION SOUGHT

Whether it is a violation of the Act for a Village to contract with a Bank in which the Village Mayor owns stock?

OTHER FACTS RELIED UPON BY THE COMMISSION

A Bank has done business with a Village since the bank's inception in 1905. The Mayor and his wife have been shareholders of the bank for approximately 15 years and currently own 3,000 shares out of a total of 130,700 outstanding shares, having a current value of \$66,030. However, the Mayor does not have a \$30,000 interest in the benefits or profits of the public contact.

The Mayor also serves on the bank's board of directors. The Mayor has held his position since July 1, 1989, and his term is due to expire on June 30, 1991.

The Village maintains checking and other accounts at the bank and has negotiated favorable arrangements with the bank for the handling of municipal funds. Recently, auditors of the State Tax Department, to insure that the Village was benefiting from competitive interest rates, requested that the Village finance director negotiate with other banks in the area. As a result of these negotiations, the bank is affording the Village higher rates of return on municipal funds on deposit with the bank.

Further, the offices of the bank are located within the municipal limits of the Village and are less than a block from City Hall. The Village has established, after approximately 85 years of continued banking, a positive relationship with the bank and when the Village experienced financial difficulties, the bank was quick to make funds available.

The Mayor has excused himself from meetings of both the Board of Directors of the bank and of the Village Council when matters involving the bank and the Village are being addressed.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-1-2(c) states that...local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected public official or member of his or her immediate family...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 member of his or her immediate family...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;

ADVISORY OPINION

The Commission finds that as an elected public official, the Mayor has direct authority and control over the letting of the Village's banking contracts.

However, pursuant to subsection 6B-2-5(d)(2), the Mayor has a limited interest in the benefits or profits of the public contract between the Village 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 Mayor and his wife own Bank stock having a value in excess of \$30,000 it is considered a limited interest since the Mayor does not have a \$30,000 interest in the profits or benefits of the public contract between the Village and the Bank.

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

However, the Mayor of the Village should be mindful of subsection 6B-1-2(c) which maintains that a public official should seek to be excused from voting, recused from deciding or otherwise relieved from acting on a matter that has become a conflict and such conflict has become personal to them. The Commission considers a matter to be "personal" to a public official when he or she receives a pecuniary interest and is affected in a manner uncommon to the other voting public officials.



CHAIRMAN