

ADVISORY OPINION NO. 90-115
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

A Business Manager/Treasurer for a County Board of Education

OPINION SOUGHT

Whether it is a violation of the Act for a County Board of Education to contract with a Bank in which a County Board of Education member has a limited interest as a stockholder?

OTHER FACTS RELIED UPON BY THE COMMISSION

A member of the County Board of Education is a joint owner (with a recently deceased Aunt) of 325 shares of stock, having a fair market value of \$80 per share with an approximate value of \$26,000. This amount is equal to less than 1% of the shares of stock issued by the Bank. The Board member will not receive \$30,000 interest in the profits or benefits of the public contract between the County Board of Education and the Bank for the year 1990-91.

The Bank was selected by the County Board of Education through a bid process to act as the provider of the Repurchases Agreement of Services for 1990-91.

The County Board of Education member abstained from participating in the discussion and voting for acceptance or rejection of any bid involved in this matter, which is documented by the Board minutes.

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;

ADVISORY OPINION

The Commission finds that the County Board of Education member, as an elected public official has direct authority and control over the County Board of Education's banking contracts.

However, pursuant to subsection 6B-2-5(d)(2), the County Board of Education member has a limited interest in the benefits or profits of the public contract between the City and the Bank, since he owns less than 1% of the outstanding shares of stock issued by the Bank. Also, the County Board of Education member does not have an interest of \$30,000 or more in the profits or benefits of the County Board of Education's public contract with 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.

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



Chairman