

ADVISORY OPINION NO. 90-111

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JULY 12, 1990

GOVERNMENTAL BODY SEEKING OPINION

County Board of Education Member-Elect

OPINION SOUGHT

Whether it is a violation of the Act for a County Board of Education to contract with a Bank when a County Board of Education member-elect is a member of the Bank's Board of Directors?

OTHER FACTS RELIED UPON BY THE COMMISSION

The County Board of Education Member-Elect will take office on July 1, 1990. She is also a Director of a Bank and a stockholder in the Bank's Holding Company with holdings of less than 10% of the shares of stock issued by the Holding Company. Her total income from dividends and director's fees is about \$24,000 per year.

The County Board of Education has signed a contract with the Bank, allowing the Bank to serve as the depository for the County Board of Education. This contract was awarded on a competitive bid basis and the Board member was not involved in any of the negotiations on behalf of the Bank or the County Board of Education.

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 she is associated may be a party to or have an interest in the profits or benefits of a contract which such official 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;

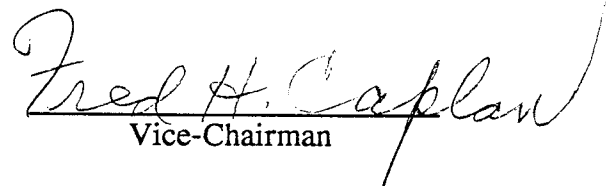
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The Commission finds that the County Board of Education Member will have direct authority and control over the County's banking contracts.

However, pursuant to subsection 6B-2-5(d)(2), the Board member-elect has a limited interest in the benefits or profits of the public contract between the County and the Bank since her holding in the Bank Holding Company is less than 10% of the shares of stock issued.

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 subsections 6B-2-5(d)(1) and (2) of the Act for the County to contract with a Bank in which a County Board of Education member has a limited interest and serves on the Board of Directors.


Vice-Chairman