

ADVISORY OPINION NO.89-73

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

A City Manager

OPINION SOUGHT

Whether it would be a violation of the Ethics Act for the City Manager to be a member of the Board of Directors for a local bank with which the City has accounts?

OTHER FACTS RELIED UPON BY THE COMMISSION

The City has accounts, certificates of deposit and a line of credit at the bank where the City Manager is a member of the Board of Directors. The City has other accounts equally divided among two other banks in the City.

A provision in the Bank bylaws prohibits a director from voting on a particular matter, where he has a personal interest. The City Manager routinely does not vote at Bank Board meetings on City matters. The City Manager owns 364 shares of bank stock out of a total 33,000 outstanding shares which are valued at over \$30,000.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that no...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 with the governmental body over which he or she has direct authority or with which he or she is employed...

West Virginia Code 6B-2-5(d)(2) states in pertinent part that a public official or...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...shareholder...of the business which is the contractor on the public contract involved. A limited interest for the purposes of this section is an interest not exceeding ten percent of the...outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser...


West Virginia Code 6B-2-5(d)(3) states in pertinent part that where the provisions of subdivision (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference

with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

ADVISORY OPINION

An analysis of the facts presented and pertinent statutory provisions of West Virginia Code 6B-2-5(d)(1) and (2) follows:

1. The City Manager is an appointed public official.
2. The Bank in which he has an interest is contracting with the governmental body by which he is employed and over which he has direct authority.
3. For the purpose of this section, limited interest is defined as an interest not exceeding ten percent or thirty thousand dollars whichever is the lesser.
4. The City Manager owns more than \$30,000 worth of stock and as a result has more than a limited interest in this Bank based on the definition presented in subsection (d)(2).
5. Therefore, it would be, without exemption, a violation of the Ethics Act subsection (d)(1) for the City to continue to contract with the local Bank when the City Manager is a Board of Director.
6. However, should the provisions of these subdivisions result in the loss of a quorum, in excessive cost, undue hardship, or other substantial interference, the affected governmental body may make a written application to the Ethics Commission for an exemption.


Vice-Chairman