

ADVISORY OPINION NO. 89-94

ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION

ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

An attorney on behalf of a City Council member

OPINION SOUGHT

Whether it is a violation of the Act for a City to transact some of its banking business with a bank where an elected member of a City Council owns shares of stock in the bank?

OTHER FACTS RELIED UPON BY THE COMMISSION

A City Council member is a Board of Director for a bank. He owns approximately 3.9% of the shares of stock issued by the banking corporation which has a value over \$30,000.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

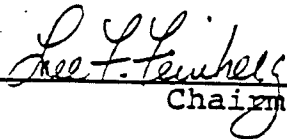
West Virginia Code 6B-2-5(d)(1) states in pertinent part that... no elected public official...or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority or with which he or she is employed.

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... 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 section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser...

ADVISORY OPINION

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

1. The City Councilman is a elected public official.
2. The business in which he has an interest (the Bank) is contracting with the City, a governmental agency over which he has direct authority.
3. The City Councilman has more than a limited interest since the value of his shares of stock issued by the Bank does exceed thirty thousand dollars in value.
4. Therefore, it is a violation of subsection (d)(1) of the Ethics Act for the City to conduct business with the Bank.
5. However, the affected governmental body may make a written application to the Commission for exemption, if can show one or more of the following would result: undue hardship, substantial interference, loss of quorum or excessive cost.



Chairman