

ADVISORY OPINION NO. 96-53

Issued on December 5, 1996 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

A County Commissioner

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 if a County Commissioner is a member of the Board of Directors for a bank that serves as a county depository?

FACTS RELIED UPON BY THE COMMISSION

The requester has served as a member of the Board of Directors of a local bank for over a year. He has recently been elected to the County Commission and is concerned to establish whether he can remain on the bank's Board of Directors after taking office.

Under West Virginia law, the County sheriff selects depositories for County funds. County Commissioners have no vote on where County funds should be deposited.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family 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 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

The Ethics Act

The Ethics Act, at WV Code 6B-2-5(d), prohibits public servants and members of their immediate family from being a party to, or having a financial interest in, a public contract over which they have authority or control by virtue of their public position.

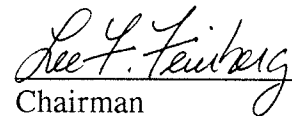
By statute, the selection of a depository for County funds is the sole responsibility of the sheriff. The County Commission has no role in that decision. Therefore it would not be a violation of WV Code 6B-2-5(d) for the requester to remain on the bank's Board of Directors.

West Virginia Code 61-10-15

West Virginia Code 61-10-15 provides that it is a criminal violation for any county officer to have a direct or indirect financial interest in the proceeds of any contract if he has voice, influence or control over the letting of such contract.

In this case, however, the County Commission has no authority in selecting the depository for County funds. That action is the sole responsibility of the Sheriff acting as the County treasurer.

Therefore it would not be a violation of WV Code 61-10-15 if the requester serves on the Board of Directors for a county depository at the same time he is a member of the County Commission provided he takes no part in initiating or participating in any attempt by the County Commission to influence the Sheriff's selection of a County depository.


Chairman