

ADVISORY OPINION NO. 2026-09

Issued On October 1, 2026, by

The West Virginia Ethics Commission

OPINION SOUGHT

A **County Prosecutor** asks if the County Commission can deposit county funds in a bank for which one of the commissioners appraises property.

FACTS RELIED UPON BY THE COMMISSION

The Requester asserts one of the three County Commissioners is a West Virginia professional real estate appraiser. The Requester believes the County Commissioner conducts real estate appraisals for various banks in the county including one in which the County Commission deposits its funds. There is no suggestion that the County Commission's bank account is connected to or involved in the County Commissioner's private appraisal business activities. The County Commissioner has no direct contact with the bank. She performs the appraisals for an appraisal subsidiary of the bank. However, the bank directly pays the Commissioner for the appraisals by check or deposit.

The County Commissioner also serves as the Commission's representative on the County Planning Commission. Matters related to her appraisal business may come before the Planning Commission. For instance, she may have appraised a property which is the subject of a zoning request. Also, it is conceivable that, as a planning commissioner, she has access to confidential information that may have value to her private appraisal business.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5 provides, in pertinent part:

(b) Use of public office for private gain. — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person....

(d) Interests in public contracts. — (1) In addition to the provisions of §61-10-15 of this code, 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 the official or employee may have direct authority to enter into, or over which he or she may have control:

W. Va. Code § 61-10-15 provides, in pertinent part:

(a) It is unlawful for any member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control:

W. Va. Code R. § 158-8-4 provides:

The prohibition of W. Va. Code § 6B-2-5(d) against being a party to or having an interest in the profits or benefits of a contract applies only to public contracts involving a governmental body or agency. Public officials or public employees or members of their immediate family are considered to be "associated" with a business if they or their immediate family member are a director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

ADVISORY OPINION

W. Va. Code § 6B-2-5(d) and W. Va. Code § 61-10-15 are the prohibited contract provisions to address in this matter. The Ethics Act prohibits a public official from having a pecuniary interest in county contracts with which the official is associated. Under W. Va. Code § 61-10-15, county contracts involving an entity subject to an official's influence are forbidden if they could lead to a pecuniary interest for that official. In the current situation, the relevant contracts are the bank's contract with the County Commission for depository services and the bank's private contract for appraisal work with the individual Commissioner.

Under these laws, county commissioners have the requisite authority to enter into and have voice, influence or control over all county commission contracts and over commissions and boards which it funds or whose members it appoints. [Advisory Opinion 1991-53](#). Such contracts include a county's contract with the bank serving as a county's depository. It is the bank and the county commission as an entity that have the pecuniary interests in the contract, not any of the individual county commissioners.

Ethics Act

In the current factual scenario, the public contract is between the County Commission and the bank. Under the Ethics Act, a county commissioner has a financial interest in a for profit business if the commissioner is "associated with" the business. W. Va. Code R. § 158-8-4 states that a public official is associated with a business if he or she or an immediate family member is a director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class. In [Advisory Opinion 1989-81](#), the Ethics Commission held that a county commissioner was associated with a bank because he served on its board of directors. In the instant case, the County Commissioner is merely a vendor of the bank. A vendor is not associated with a business for purposes of W. Va Code R. § 158-8-4. Consequently, the County Commissioner does not have a pecuniary interest in the contract between the bank and the County Commission. Accordingly, the Ethics Act does not forbid a County Commission from depositing county funds into a bank for whom a County Commissioner appraises property.

W. Va. Code § 61-10-15

W. Va. Code § 61-10-15 also must be considered because it forbids a county commissioner from being or becoming "pecuniarily interested, directly or indirectly, in the proceeds of any contract" over which he or she may "have any voice, influence or control." Therefore, the next question is whether the County Commissioner has voice, influence or control for purposes of § 61-10-15, over her own private contract with the bank given her position on the County Commission. In other words, does she, by the mere fact of being a commissioner, have any influence over the bank's decision to contract with the Commissioner for purposes of this statute? In [Advisory Opinion 1993-20](#), a county commissioner asked if he could contract with a city to renovate a facility it leased to the county for magistrate court operations. In that matter, the Ethics

Commission determined that because the city, rather than the county, was the contracting party for the renovation, individual county commissioners possessed no voice, influence, or control over the construction contract. Therefore, the county commission could continue leasing the facility if the county commissioner became contracted with the city to renovate the facility. As in [Advisory Opinion 1993-20](#), it is clear that the County Commission and its individual commissioners have no voice, influence or control over who the bank hires for its private appraisal work.

Further, in [Advisory Opinion 1994-37](#)¹, board members of a county area development corporation asked if they could do private business with companies that had contracts with the county area development corporation. The Ethics Commission concluded that board members were permitted to conduct private business with companies contracting with the county area development corporation, as the members exercised no control over the private entity's selection of business partners.

Finally, in [Advisory Opinion 2021-21](#), the Ethics Commission determined that a county board of education member's private construction business could contract with a client that also does business with the board of education. The board of education member is considered not to have a financial interest in contracts between the board of education and the client, provided that the member does not perform work for the client as a contractor or subcontractor on projects funded in whole or in part by the board of education.

Advisory Opinions 1999-16 and 2021-21 provide a caveat to the principle that a county official may do business privately with a person or company that does business with his or her governmental entity: The county official may not engage in commercial activity with such a business in matters in which the governmental entity is a party. The County Commissioner's appraisal services have no relation to the deposit of county funds in the

¹ See also [Advisory Opinion 1994-35](#)

bank. However, the county commissioner should not provide appraisal services of property for a transaction in which the County is a party.

W. Va. Code § 6B-2-5(d) and § 61-10-15 do not prohibit a County Commission from depositing county funds in the same bank that hires a County Commissioner to appraise property. However, the County Commissioner may not appraise property related to a sale/purchase transaction in which the county commission is a party.²

The Requester also posed several other related questions. The Ethics Commission will briefly address those issues. First, the Requester asks if the County Commissioner may have contact with the bank concerning the account of the County Commission. For the reasons stated above, if the Commissioner does so as a fulfillment of his or her duties as a County Commissioner, such contact with the bank is not prohibited. The County Commissioner may not use this occasion to try and obtain more favorable terms for his or her appraisal business. Such conduct would constitute use of public office for private gain which is prohibited by W. Va. Code § 6B-2-5(b).

Second, the Requester asks what steps the County Commission must take to eliminate conflicts of interests with a bank with which it deposits funds. The County Commission should avoid depositing funds in a bank with which a county commissioner or an immediate family member are a director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class. If this proves to be a hardship, the County Commission may seek a contract exemption and if that is

² In [Advisory Opinion 1990-97](#), the Ethics Commission held that a County Commissioner may perform real estate appraisals for banks who do not do business with the County Commission. This is correct in and of itself. However, the dicta within the Opinion suggests that a County Commissioner may not perform real estate appraisals for banks who do not do business with the County Commission. The Ethics Commission seemed to simply assume that the County Commissioner was associated with the bank by virtue of doing appraisals for it. This is certainly not the case at the present time as even a casual review of W. Va. Code R. § 158-8-4 reveals. However, one should note that this Opinion was issued prior to the initial enactment of W. Va. Code R. § 158-8-1, et seq. In 1992.

approved, the particular county commissioner associated with the bank must recuse himself/herself from all deliberations and votes related to the situation pursuant to W. Va. Code § 6B-2-5(d)(4) and W. Va. Code § 61-10-15.

Finally, the Requester notes that, as a member of the County Planning Commission, matters may come before the County Commissioner concerning parties with whom he or she has conducted business through his or her appraisal business and the County Commissioner may have access to confidential information that may have value to his or her private appraisal business. W. Va. Code § 6B-2-5(j)(1) would require the County Commissioner to recuse himself/herself from deliberation or votes concerning parties with whom he or she has a *current financial interest*. Past business dealings with parties would not require recusal. As for the possibility of the County Commissioner acquiring confidential information, W. Va. Code § 6B-2-5(e) forbids disclosure of confidential information and use of it for private gain. Possessing such information does not violate the Ethics Act. In [Advisory Opinion 2021-08](#), the Ethics Commission concisely noted that “violations of the Act’s confidentiality and private gain provisions both require an actual breach rather than mere potential violation.”

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, et seq., and W. Va. Code § 61-10-15 and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other similarly situated public servants unless and until it is amended or revoked, or the law is changed.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission