

ADVISORY OPINION NO. 89-70
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON DECEMBER 22, 1989

GOVERNMENTAL BODY SEEKING OPINION

A Superintendent of a County School System

OPINION SOUGHT

Whether it is a violation of the Act for a County Board of Education to deposit or invest funds with a bank where a teacher employed by the School Board owns shares in the bank, but has no direct association with the bank?

OTHER FACTS RELIED UPON BY THE COMMISSION

The teacher inherited bank stock from his parents, which value exceeds \$30,000. The teacher is not in a position to influence policies of the bank or decisions of the county school system.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

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

West Virginia Code 6B-2-5(d)(2) states in pertinent part that...a public employee 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...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...thirty thousand dollars...

ADVISORY OPINION

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

1. The teacher is public employee, employed by the County Board of Education.
2. The teacher has more than a limited interest in a bank which is contracting with the governmental agency which employs the teacher since the stock he owns is valued at more than \$30,000.
3. Limited interest for the purpose of this section is defined as an interest not exceeding ten percent of the outstanding shares of a corporation or thirty thousand dollars whichever is the lesser.
4. Therefore, it would be a violation of subsection (d)(1) of the Act for the Board of Education to contract without exemption, with the local bank when an employee of the Board of Education holds more than a limited interest in that Bank.
5. However, the affected governmental body may make a written application to the Ethics Commission for exemption if it can show that excessive cost, undue hardship or other substantial interference would result.

Lee F. Lumberg
Chairman