

ADVISORY OPINION NO. 90-24

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON FEBRUARY 16, 1990

GOVERNMENTAL BODY SEEKING OPINION

The Mayor of a Town

OPINION SOUGHT

Whether it is a violation of the Ethics Act for a Town to contract with a Bank when the Town's Mayor has a limited interest in the Bank?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Mayor of a Town is a member of the advisory committee for a branch bank which conducts business with the Town. This branch bank is the only bank in the community, with the closest bank being thirty miles away.

As a member of the bank's advisory committee the Mayor holds a small amount of stock (100 shares valued at \$3,000) and has personal accounts with the branch bank.

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...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...

West Virginia Code 6B-2-5(d)(2) states in pertinent part that... an elected or appointed public official...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 facts presented and the pertinent statutory provisions of subsection (d)(1) and (2) follows:

1. The Mayor of a Town is an elected public official with direct authority over a governmental agency (the Town).
2. Since the Mayor owns less than ten percent of the issued stock valued at less than \$30,000 she has a limited interest in the bank which contracts with the Town.
3. For the purpose of this section "limited interest" is defined as an interest not exceeding ten percent of the outstanding shares of stock issued by a corporation or thirty thousand dollars, whichever is the lesser.
4. Therefore, it is not a violation of subsection (d)(1) of the Act for the Mayor to be an advisory committee member and own stock in a bank which contracts with the town since she has a limited interest in the bank.

L. F. Tucker
Chairman