

ADVISORY OPINION NO. 90-45

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JUNE 6, 1990

GOVERNMENTAL BODY SEEKING OPINION

Member of an Economic Development and Authority

OPINION SOUGHT

Whether it is a violation of the Act for a Development and Authority to contract with a Bank when a member's spouse owns Bank stock over \$30,000?

OTHER FACTS RELIED UPON BY THE COMMISSION

The Development and Authority member's wife is a Director of a Bank and owns in excess of \$30,000 of stock issued by the Holding Company that owns the Bank. However, this constitutes less than a 10% interest in the Bank. Additionally this contract will not result in a thirty thousand dollars interest in the profits or benefits to the member's wife.

For several years the Bank has bid on turnpike funds via a competitive method and has been successful in obtaining funds by placing the high bid. In addition the Bank receives toll revenues daily from the Authority and is one of three depositories of the Development and Authority.

This banking relationship was negotiated with the Bank by the General Manager several years ago. It requires the Bank to receive, count and verify tolls daily and then deposit these funds into the Development and Authority's account, the Bank is allowed to keep certain balances interest free for the expense they incur in handling the account. All balances over that amount go into a daily sweep account that pays interest to the Development and Authority.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no appointed public official...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...may have direct authority to enter into, or over which he or she may have control. Provided, however, that nothing herein shall be construed to prohibit a... part-time

appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

West Virginia Code Section 6B-2-5(d)(2) states in pertinent part that...an elected...public official...or a member of his or her immediate family 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 subsection is:

(A) An interest:

(i) not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) not exceeding thirty thousand dollars interest in the profits or benefits of the contract;

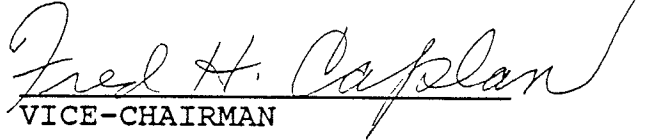
ADVISORY OPINION

1. The Commission previously determined in Advisory Opinion No. 89-85 it was a violation of subsection 6B-2-5(d)(1) for the Development and Authority member's spouse to have more than a limited interest (determined based on the spouse's ownership of over \$30,000 worth of Bank stock) in a Bank where the Development and Authority deposits funds.

2. However, under the Ethics Act as amended in June 1990, a limited interest is now defined to be an interest not exceeding a \$30,000 interest in the profits or benefits of the contract.

3. Although the Development and Authority member's spouse owns \$30,000 stock in the Bank that is considered a limited interest since the spouse does not have a \$30,000 interest in the profits or benefits of the public contract between the Bank and the Development and Authority.

4. Therefore, it is not a violation of subsection 5(d)(1) of the Act for the Development and Authority to contract with a Bank in which a Development and Authority member's spouse has Bank stock in excess of \$30,000 as long as the spouse maintains a limited interest in the public contract between the Bank and the Development and Authority.


VICE-CHAIRMAN