

ADVISORY OPINION NO. 96-09
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON MARCH 7, 1996

PUBLIC SERVANT SEEKING OPINION

County Commissioner

OPINION SOUGHT

Is it a violation of the Ethics Act or WV Code 61-10-15 for a County Commissioner to serve on the Board of a bank which is the assignee of County contracts?

FACTS RELIED UPON BY THE COMMISSION

A County Commission sought proposals on lease purchases of two major items of capital equipment and in both instances it selected the lowest local bid. The lease purchase contracts were between the County Commission and a leasing company but they gave the company the ability to assign the contracts to another party. The County Commission had no voice, influence or control over the decision to assign the contracts or to choose the identity of any particular assignee.

Approximately four weeks after the bid was awarded, a member of the County Commission was contacted by a local bank to serve on the bank's Board of Directors. This contact was based upon the Commissioner's personal and business accounts at this particular bank. The Commissioner accepted the position on the bank's Board. The official date of this appointment to the position on the Board of Directors was the date he attended his first meeting of the Board. On that same day the County Commission received notice that the lease purchase agreements had been assigned to this same bank.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...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. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...or any member of any other county or district board, or for any county or district officer 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

In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act that would prohibit a County Commissioner from serving on the Board of Directors of a bank which has become the assignee of contracts originally entered into by the County Commission and another party.

The Commission bases this conclusion on the understanding that: 1.) the County Commission exercised no influence over the leasing company's decision to assign the contracts or its selection of the bank as its assignee; and 2.) there was no quid pro quo or other arrangement between the County Commissioner and the bank which would indicate that the appointment of the County Commissioner to the bank's Board of Directors was contingent upon the selection of the leasing company.

West Virginia Code 6B-2-5(b)(1) prohibits a public servant from using his office or its resulting prestige for his own private gain or for the private gain of another. Consequently, the County Commissioner who has accepted a seat on the bank's Board of Directors may not use his position on the County Commission to increase or promote his personal interests or the interests of that particular bank.

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 the contracts subject to scrutiny under WV Code 61-10-15 are the original contracts between the County Commission and the leasing agency. At the time those contracts were executed, no member of the County Commission had a direct or indirect financial interest in them.

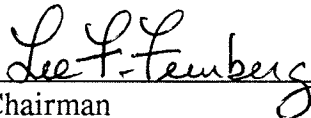
In Advisory Opinion #91-66 a County Commission, citing WV Code 61-10-15, had refused to pay a bill owed to an oil company because an employee and minor shareholder of that company was elected to the County Commission. The Ethics Commission ruled, however, that it "did not consider the belated approval of payment under a contract which was entered into prior to the County Commission member's election to office to be the type of voice, influence or control over a contract covered by West Virginia Code §61-10-15." An analogous situation exists in this case with contracts that were executed prior to the County Commissioner taking a seat on the bank Board.

In deciding this request the Ethics Commission understands that the County Commission exercised no voice, influence or control over the leasing company's decision to assign the contracts or its selection of the bank as its assignee. Further, there was no quid pro quo or other arrangement between the County Commissioner and the bank which would indicate that the appointment of the County Commissioner to the bank's Board of Directors was contingent upon the selection of a particular leasing company.

Therefore, it would not be a violation of WV Code 61-10-15 for a County Commissioner to serve on the Board of Directors of a bank which became the assignee of County obligations based upon the independent choice of the original party to the obligations.

Further, pursuant to WV Code 6B-2-3 of the Ethics Act, any person acting in good faith reliance on an advisory opinion issued by the Ethics Commission shall be afforded immunity from the sanctions of WV Code 61-10-15.

This opinion is limited, however, to payments made to the bank as assignee of the two original contracts between the leasing agency and the County Commission. It should not be construed as approving **future** contracts between this bank and the County Commission while the County Commissioner sits on the bank Board since such contracts would likely violate WV Code 61-10-15.


Chairman