



A Guide to the West Virginia Ethics Act

(WV Code 6B-1-1, et. Seq.)



WEST VIRGINIA ETHICS COMMISSION

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“ Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people. “
Henry Clay 1829



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INTRODUCTION

The West Virginia Ethics Commission was established in July 1989 to administer the West Virginia Governmental Ethics Act, which was passed in a Special Session of the West Virginia Legislature in January 1989. (WV Code 6B-1-1, et. Seq.)



The Commission is an independent, bi-partisan board consisting of twelve citizen members, appointed by the Governor, and confirmed by the West Virginia State Senate. Commissioners serve staggered five-year terms,

The Commission holds monthly meetings that are open to the public. The date, time, place and agenda of each meeting are made available on the Commission's Web site: www.wvethicscommission.org

The Ethics Commission administers the Ethics Act by educating public servants covered by the Act, providing information to the public, interpreting and applying the provisions in the Act, and enforcing the requirements of the Act through an investigation and complaint process.

In addition to administering the Ethics Act, the Commission's staff answers questions from governing bodies and their members and the Commission provides advisory opinions on the meaning and application of the Open Meetings Act or *Sunshine Law* through its Committee on Open Governmental Meetings.

The WV Ethics Commission's Committee on Standards of Conduct for Administrative Law Judges answers questions from ALJs and provides advisory opinions to them relating to the Rules on Standards of Conduct. It also enforces the Code through an administrative procedure for adjudicating complaints filed against ALJs.

The Ethics Commission also administers the registration and reporting requirements for lobbyists as well as collecting financial disclosure reports which certain public servants are required to file annually.



Advisory Opinions

In response to written requests from affected persons inquiring about their own conduct, the Ethics Commission issues advisory opinions relating to the application of the standards of conduct in the Ethics Act including conflicts of interest, financial disclosure and lobbying. A person subject to the Act may request an opinion regarding a proposed future course of action. An opinion issued by the Commission provides the employee or official, and any other similarly situated public servant who relies on an opinion in good faith, immunity from the sanctions in the Act, as well as an absolute defense to criminal prosecution under the Act. Precedential Advisory Opinions rendered by the Commission from 2005 to the present are available on the Commission's web site.

Since 1989, the Commission has issued hundreds of written advisory opinions interpreting and applying the Ethics Act. These precedents allow the Commission's staff to handle most inquiries over the telephone. Persons seeking guidance on complying with the Act may also submit inquiries via fax, E-mail or regular mail. Questions will only be submitted to the Commission for a formal advisory opinion where there is no precedent covering the inquiry, or the requester expressly indicates that he or she wishes the question to be addressed by the full Commission.



Finally, the Ethics Commission is authorized to issue written advisory opinions to county board of education members, members-elect and candidates for election to the board whether they may hold certain other positions and serve on a county board in accordance with the provisions of W. Va. Code § 18-5-1a.



ALL Public Servants are Subject to the Ethics Act

The code of conduct established by the **Ethics Act** applies to all public servants including public employees, elected public officials, and appointed public officials, whether full-



time or part-time, in the legislative, judicial, and executive branches of state, county and municipal government, including all boards, commissions and agencies.



MINIMUM ETHICAL STANDARDS ESTABLISHED BY THE ACT

The basic principle underlying the standards or code of conduct created by the Ethics Act is that those in public service should use their positions for the public's benefit and not for their own private gain or the private gain of another.

Private Gain

For example:

Do not use your agency's supplies or equipment for personal projects or activities.

Public employees and full-time appointed officials should not work on personal projects or activities during work hours for which they are paid by their employer.

Do not use subordinates to work on your personal projects or activities during work hours or compel them to do so on their own time.

The Act prohibits any misuse of public resources which is more than *de minimis*, that is, which involves more than a trifling or insignificant amount of time, funds, supplies or equipment.





VOTING

Under a provision which was added to the Ethics Act in 2008, a public official may not vote on a matter in which he or she, or an immediate family member, has a financial interest.

Similarly, public officials may not vote on matters involving a business with which the public official or an immediate family member is associated.

Public officials or their immediate family members are considered to be associated with a business if either the public official or an immediate family member is a director, officer, owner, employee, compensated agent, or owns five per cent or more of the total outstanding stock of any class from that business.

The Act defines immediate family to include the spouse with whom an individual is living as husband and wife, as well as any dependent children, dependent grandchildren or dependent parents.

The voting rules also prohibit a public official from voting on a personnel matter involving the public official's spouse or relative. The Act defines *relative* as a husband or wife, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

The rule further prohibits voting to appropriate public funds or award a contract to a nonprofit corporation if the public official or an immediate family member is employed by the nonprofit. Another provision prohibits a public official who is employed by a financial institution, and whose primary responsibilities with the institution include consumer and commercial lending, from voting on a matter which involves a customer of the financial institution. This prohibition only applies if the amount of the loan or loans to the customer exceeds

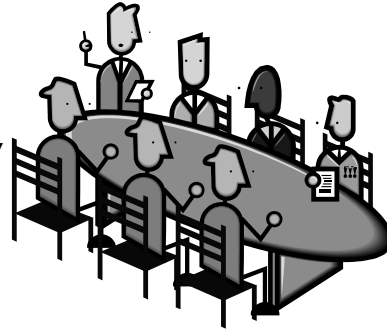
Public officials may not vote on matters involving a business with which the public official or an immediate family member is associated”



fifteen thousand dollars in a calendar year, and the public official was directly involved in approving a loan to that customer within the past twelve months, or is currently considering such a loan.

Public officials may vote on a matter involving a spouse, immediate family member, relative, or business with which they are associated, if they are affected by the matter as a member of a profession, occupation, class of persons or class of businesses. The law defines a class as consisting of not less than five similarly situated persons or businesses.

A public official may also vote on a matter affecting a publicly traded company so long as: (1) the public official and dependent family members individually or jointly own no more than five per cent of the company's issued stock; and (2) the value of the stocks individually or jointly owned is less than ten thousand dollars; and (3) prior to casting a vote, the public official discloses his or her interest in the publicly traded company.



Whenever a public official is prohibited from voting under the Act, the public official must fully disclose his or her interests, and physically remove himself or herself from the room during the discussion and vote on the matter from which they are disqualified. Ordinarily, the member's recusal should be documented in the meeting minutes.

These voting rules do not apply to Members of the Legislature. Legislative voting is governed by a separate provision in the Act which permits voting by Legislators after obtaining a ruling from the presiding officer in their chamber regarding any potential conflict situation.

GIFTS

You may not **solicit** a gift unless it is for a charitable purpose from which you and your immediate family members derive no direct personal benefit. The Commission determines whether a purpose is charitable on a case-by-case basis. However, charities which benefit the

poor and disadvantaged, which provide for the cure or treatment of a particular illness or disease, or benefit the public generally through cultural and educational programs such as museums and libraries, have previously been determined to qualify as charitable.

The Ethics Act's prohibition against solicitation of gifts does not apply to solicitation of political contributions. However, W. Va. Code § 3-8-12(h) dealing with regulation and control of elections provides "No person shall solicit any [political] contribution from any non-elective salaried employee of the state government or of any of its subdivisions."



You may not solicit a subordinate for any gift - not even a gift for a charitable purpose.

You may **not accept gifts** from lobbyists, or from "interested persons ", unless the gift fits into one of the following **exceptions**:

- ◆ meals and beverages
- ◆ unsolicited gifts of a value of \$25 or less
- ◆ ceremonial gifts or awards of insignificant value
- ◆ reasonable expenses incurred in appearing at a speaking engagement
- ◆ reasonable honoraria, where permitted by Commission's rules
- ◆ free tickets to political, charitable, or cultural events customarily given as a courtesy to the office
- ◆ purely private and personal gifts
- ◆ lawful political contributions

Additional guidance on accepting and soliciting gifts may be obtained in the Commission's Legislative Rule on gifts, Title 158, Series 7, and the Commission's gift guidelines. These documents may be found and downloaded from the Commission's website.

"Interested persons" are those who do or seek to do business with, are regulated by, or are otherwise financially interested in the activities of your governmental agency.



Selling to Subordinates

Although they may choose to buy from you, you may not personally solicit (in person, by phone, or personal letter) private business from subordinates you direct, supervise or control. Sales solicitations directed to the public at large or for property of a kind you are not regularly engaged in selling are permitted.

Private Interests in Public Contracts, Purchases & Sales

The Ethics Act includes a prohibition against elected public officials and full-time public employees, whether appointed or employed, having a financial interest in any contract, purchase or sale over which their public position gives them control, unless the total value of such contracts, purchases or sales does not exceed \$1000 in a calendar year. Even then, the public official may not be involved in influencing the award of the contract

This prohibition also extends to contracts in which the public servant's spouse, dependent parents, or dependent children have a financial interest, as well as to any business with which the public servant or his or her immediate family members are associated. This \$1000 exception does not apply to county officials who are governed by more stringent limitations in W. Va. Code §61-10-15.

For purposes of this prohibition, public servants and their immediate family members are *associated* with a business if any one of them is a director or officer in the business, or if they hold stock in the business which constitutes 5 per cent or more of the total outstanding stock of any one class.

This provision applies only to (1) those **contracts** your job gives you authority to award or control and (2) those **purchases** and **sales** you are authorized to make or direct others to make. The Commission can grant **your agency** a hardship exemption from this provision of the Ethics Act.

Part-time appointed officials (but not those county officials subject to W. Va. Code § 61-10-15) are not subject to the prohibition provided they recuse themselves from considering and acting on such matters, consistent with the rules on voting.



Licensing and Rate-Making Proceedings

You may not take official action on a license or rate-making matter affecting an entity in which you, or the members of your immediate family, own or control more than a 10 per cent interest. In addition, **UNLESS** you file a prior written public disclosure with your agency, you may not take official action on a license or rate-making matter affecting a person to whom such an entity has sold goods or services totaling more than \$1,000 during the preceding year.

Employment, Moonlighting or Changing Jobs

The Ethics Act prohibits full-time public servants from seeking or accepting employment from persons or businesses that they or their subordinates regulate. The Act also prohibits full-time public servants from seeking or accepting employment from vendors if the public servant, or his or her subordinates, exercise authority or control over a public contract with that vendor. It does not apply to members of the Legislature.



Public Servants may request an exemption from the Ethics Commission to seek employment with vendors or regulated persons with whom they or a subordinate exercise control at present or in the past twelve months.

Dual Compensation

No public servant may receive compensation from two sources in state, county or municipal government for working the same hours, except under certain limited circumstances. Persons who are allowed to make up time missed with a governmental employer to perform the duties of another governmental position are required to maintain specific time records. Their governmental employer is required to submit these records to the Ethics Commission quarterly.



Purchase of Real or Personal Property

Full-time public servants may not purchase real or personal property from:

- (1) a person or business which they or their subordinates are currently regulating;
- (2) a person or business which they or their subordinates have regulated within the preceding twelve months; or
- (3) a vendor to their agency, if they exercise authority or control over a public contract with that vendor.



The Commission, by Legislative Rule, has established certain exemptions from these limitations, such as purchases of personal property from a business that is available to the general public on the same terms and conditions.

Other Conflicts of Interest

Full-time public servants may not take personal regulatory action on matters affecting a person (1) by whom they are secondarily employed or (2) with whom they are seeking employment or have an agreement concerning future employment.

A similar limitation applies to employees or prospective employees of vendors. A full-time public servant may not personally participate in any decision, approval, disapproval, recommendation, investigation, or inspection of a vendor by whom they are secondarily employed, or with whom they are seeking employment or have an agreement regarding future employment.

Private Pay Prohibited



Full-time public servants may not accept private pay for providing information or services that are within the scope of their public duties. In other words, they can't sell, even on their own time, services their public position requires them to provide. This applies only to private work for people or businesses they serve as

part of their public duties.

These Limitations Apply Both During and After Your Government Service

Confidential Information: You may not during or after government service, knowingly and improperly disclose confidential information acquired through your public position or use it to further personal interests of yourself or another person.

Prohibited Representation: The Act requires you to obtain your agency's consent before you represent a client in a matter in which you are or were substantially involved on behalf of the agency. This applies both during and after your government service.

The prohibition applies only to those matters in which you were personally involved in a decision making, advisory, or staff support capacity. It does not apply to legislators or legislative staff.

Limitation on Practice: Certain public servants are prohibited from representing persons before their agency: (1) while they are with the agency, and (2) for one year after leaving the agency. The prohibition applies only to elected and appointed public **officials** and full-time staff **attorneys** and **accountants** in agencies authorized to hear contested cases or make regulations.

This prohibition applies to representation in contested cases, regulation filings, license or permit applications, rate-making proceedings and to influence the expenditure of public funds. It does not apply to legislators or legislative staff.

Additional Agency Restrictions

Agencies are permitted to adopt additional standards of conduct for their personnel that are more restrictive than the minimum standards established in the Ethics Act. Therefore, you may want to check with your agency to see if it imposes additional rules of conduct that supplement these general prohibitions.





LOBBYING

The Ethics Act requires anyone who is compensated to lobby in support of or opposition to any legislation or legislative or administrative rules, or who spends over \$150 annually on public officials in furtherance of such activity to register with the Ethics Commission. Registered lobbyists are required to file periodic reports of their lobbying activity, including reporting certain expenses. These reports are public records and are subject to random audits by the Commission.



Additional information on lobbying is available in the Commission's *Guide to Lobbying in West Virginia*. This pamphlet may be obtained from the Commission's office or downloaded from the Commission's website. The Commission also publishes a directory of registered lobbyists annually. This same information is updated and posted for public view on the Commission's website.

FINANCIAL DISCLOSURE

Certain public officials and candidates are required to file financial disclosure statements with the Commission. Candidates for all state and county offices must file a financial disclosure statement within ten days after he or she files a certificate of candidacy. Those persons who are elected to such positions thereafter file a financial disclosure report on an annual basis. In addition, all members of state boards, commissions and agencies who are appointed by the governor must file within 30 days after assuming their duties.

Annual reports are also required from cabinet secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, and department heads. These forms are public records available for inspection in the Commission's offices during normal business hours.



ADMINISTRATIVE LAW JUDGE CODE OF CONDUCT

The Ethics Commission administers a Code of Conduct for administrative law judges and hearing examiners serving in the executive branch of state government. The Code of Conduct was developed in consultation with the West Virginia State Bar to establish rules of professional conduct for the administrative judiciary which are similar to the rules governing judges in the judicial branch of state government.




A three member Committee on Standards of Conduct for Administrative Law Judges issues written advisory opinions on the meaning and application of the code to persons who are subject to these standards. The Commission also adjudicates verified complaints filed against administrative law judges through a formal complaint procedure.

COMPLAINTS

The Ethics Commission has sole responsibility for investigating and resolving violations of the Ethics Act. Any citizen who is aware of a violation of the Act may file a verified written complaint with the Commission. The Commission must consider all sworn complaints it receives.

The Commission may also initiate complaints on its own initiative, if it receives credible evidence of a material violation. Whether a complaint is initiated by a citizen or the Commission, only those complaints which a three-member Probable Cause Review Board finds to allege a material violation of the Act are investigated. Complaints which allege trivial or inconsequential violations or are outside the two year statute of limitations are not accepted for investigation.

The Commission has authority to subpoena evidence and testimony although no person alleged to have violated the Act is required to give testimony. However, it is a violation of the Act to give false and misleading information to the Commission or to procure or induce another to provide false information to the Commission.



Persons found guilty of a material violation of the Act may be publicly reprimanded and fined up to five thousand dollars per violation. In appropriate circumstances, the Commission may order restitution or **recommend** that the person be removed from office or his or her employment be terminated.



BAD FAITH COMPLAINTS

If the Commission finds by clear and convincing evidence that a complaint was made in bad faith, either knowing that the allegations are untrue or in reckless disregard for the truth, it may issue sanctions against the complainant. Possible sanctions include ordering the payment of reasonable attorney fees to the respondent, reimbursing the Commission for its investigative costs and being barred from filing any further complaints with the Commission.



Ethics Education and Public Information

The Ethics Commission staff provides a variety of ethics education programs free of charge. In addition to conducting training programs for groups of public officials, public employees and citizens, the Commission has pamphlets and guidelines addressing various ethics issues. Many of these materials are available to be downloaded from the Commission's web site.



If you have questions, need more information or wish to request an Ethics Commission representative to provide training, please write, call or view our web site:

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This brochure is designed to advise the reader of the general types of conduct prohibited under the Ethics Act and is not intended to restate the specific restrictions in the Code. You are encouraged to contact the Ethics Commission with any questions you may have after reading this publication.