

West Virginia Ethics Commission



The Difference between Employment Exemptions and “Revolving Door” Prohibitions Guideline

Employment Exemptions

The Ethics Act prohibits full-time public officials or employees from seeking employment with (1) any person¹ over whom they or a subordinate took regulatory action within the preceding 12 months; (2) a person who has a matter before the agency on which the official or employee, or a subordinate, is working, or (3) a person who is a vendor to the agency where the official serves or the employee is employed and the official or employee, or a subordinate, exercises authority or control over a public contract with the vendor.

The Act, however, sets forth a process for these public officials and employees to seek an “employment exemption” from this prohibition from the Ethics Commission. W. Va. Code § 6B-2-5(h) and W. Va. Code R. §§ 158-11-1 through 158-11-5.

The purpose of the employment exemption process is to provide a mechanism for full-time public servants to begin a job search in the private sector provided that they put their supervisor on notice and are removed from the decision-making process affecting businesses with whom they are communicating about potential job opportunities. If a public servant terminates his or her public service, he or she is not required to seek an exemption for purposes of speaking with potential employers because he or she no longer exercises control over potential employers through his or her governmental position.

To be granted an employment exemption, public servants must demonstrate that they will be “adversely affected” if they are not granted an exemption. The Ethics Commission routinely has found that persons will be adversely affected if they are prohibited from exploring employment opportunities during their government service. To find otherwise would require the public servant to terminate his or her public employment or position before seeking other employment. Most public servants are financially unable to terminate their current employment before they begin to look for a new job.

¹ Under the Ethics Act, a “person” includes corporation, associations and related entities.

Post-Employment Restrictions

Revolving Door

The Ethics Act also contains provisions that restrict and prohibit elected or appointed officials and full-time staff attorneys and accountants from appearing before their board, agency, commission or department after they terminate their governmental service.

W. Va. Code § 6B-2-5(g) provides that elected or appointed officials and full-time staff attorneys and accountants may not, during their public employment and for one year after the termination of such public employment or service, appear in a representative capacity before the governmental entity in which they served or were employed in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed rule;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

This one-year period is commonly referred to as the “**revolving door prohibition**” because a public servant is limited in appearing, or “revolving,” back before his or her former agency. For example, a staff attorney who terminates his or her employment with the West Virginia Human Rights Commission may not represent clients before the Human Rights Commission for a one-year period after the termination of his or her employment.² See Advisory Opinion 2007-04. While the Ethics Act authorizes the Ethics Commission to grant an exemption to the revolving door prohibition, since the Act’s passage in 1989 only one such exemption was granted (in Advisory Opinion 89-134).

Another portion of the Ethics Act, at W. Va. Code § 6B-2-5(f), prohibits former and current public servants from representing clients in contested cases, rate-making proceedings, license or permit application proceedings, regulation filings or other particular matters involving a specific party or parties which arose during their public service and in which they personally and substantially participated in a decision-making, advisory or staff support capacity. The governmental agency, however, may consent to such representation. This limitation does not apply if the client was only affected as a member of a class of five or more persons or businesses. This limitation lasts permanently not just for one year.

² Government attorneys are also subject to the West Virginia Rules of Professional Conduct. Rule 1.11, entitled “Special Conflicts of Interest for Former and Current Government Officers and Employees,” and Rule 1.12, entitled “Former Judge, Arbitrator, Mediator or Other Third-Party Neutral,” which contain similar limitations. The Ethics Commission, however, has no authority to interpret these provisions. Any questions regarding their application should be directed to the West Virginia State Bar’s Office of Disciplinary Counsel.

Lobbying Revolving Door

Public servants holding the following positions may not register as a lobbyist until one year after the termination of their public service or employment: (1) members of the Legislature; (2) the Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General; (3) will and pleasure professional employees of the Legislature who worked under the direct supervision of a member of the Legislature; (4) will and pleasure professional employees of members of the Executive Department who were under the direct supervision of the Executive Department officer and who regularly, personally and substantially participated in a decision-making or advisory capacity regarding agency or department policy; (5) members of the Supreme Court of Appeals; (6) department secretaries of the Departments of Administration, Education and the Arts, Environmental Protection, Health and Human Resources, Military Affairs and Public Safety, Revenue, Transportation, Commerce and Veterans' Assistance, and (7) heads of any state departments or agencies.

The Ethics Commission has no authority to grant an exemption to the lobbying revolving door provision.

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