West Virginia Ethics Commission

Public Officials' Use of Their Name or Likeness

The Ethics Act includes a section which sets forth limitations on the use of public officials' name or likeness on "trinkets," advertising, vehicles, educational materials, websites and social media. Effective June 10, 2016, this section is set forth in W.Va. Code § 6B-2B-1 through -6.

This section of the Act, which is entitled "Limitations on a Public Official from Using His or Her Name or Likeness," is commonly referred to as the "trinkets statute."

Who is subject to the trinkets statute

The statute provides that public officials, their agents, or anyone on public payroll may not place the public official's name or likeness on trinkets paid for with public funds.

"Public employee" means any full-time or part-time employee of any state, or political subdivision of the state, and their respective boards, agencies, departments and commissions, or in any other regional or local governmental agency.

"Public official" means any person who is elected or appointed to any state, county or municipal office or position, including boards, agencies, departments and commissions, or in any other regional or local governmental agency.

"Agent" means any volunteer or employee, contractual or permanent, serving at the discretion of a public official or public employee.

"Public payroll" means payment of public monies as a wage or salary from the state, or political subdivision of the state, or any other regional or local governmental agency, whether accepted or not.

Names and likenesses on "trinkets"

The statute provides that "public officials, their agents, or anyone on public payroll may not place the public official's name or likeness on trinkets paid for with public funds."

"Trinkets" are defined as items of tangible personal property that are not vital or necessary to the duties of the public official's or public employee's office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, Band-Aid dispensers, fans, nail files, matches and bags. "Likeness" means a photograph, drawing or other depiction of an individual.

When appropriate and reasonable, public officials may expend a minimal amount of public funds for the purchase of pens, pencils or other markers with an official's name and/or likeness to be used only during ceremonial signings.

Names and likenesses in advertising

The statute provides that public officials, their agents, or anyone on public payroll may not use public funds to distribute, disseminate, publish or display the public official's name or likeness for the purpose of advertising to the general public.

"Advertising" means publishing, distributing, disseminating, communicating or displaying information to the general public through audio, visual or other media tools. It includes, but is not limited to, billboard, radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social media, websites and other forms of publication, dissemination, display or communication.

The statute provides that a public official's name and likeness <u>may</u> be used in a public announcement or mass media communication when necessary, reasonable and appropriate to relay specific public safety, health or emergency information.

Dissemination of office press releases or agency information via email, social media or other public media tools for official purposes is <u>not</u> considered advertising or prohibited if it: (i) Is intended for a legitimate news or informational purpose; (ii) is not intended as a means of promotion of the public official, and (iii) is not being used as "educational material." *(See "Names and likenesses on educational materials" section below.)*

A public official may use his/her name or likeness on any official record or report, letterhead, document or certificate or instructional material issued in the course of his/her duties as a public official. Other official documents used in the normal course of the agency's business, including, but not limited to, facsimile cover sheets, press release headers, office signage and envelopes may include the public official's name,

but not his/her likeness. The statute's prohibitions do not apply to items or materials required by law to contain the public official's name or likeness.

Banners and table skirts are considered advertising and may not include the public official's name or likeness.

The trinkets statute does not prohibit public officials from using public funds to communicate with constituents in the normal course of their duties as public officials if the communications do not include any reference to voting in favor of the public official in an election.

Names and likenesses on vehicles

Public officials, their agents, or any person on public payroll may not use or place the public official's name or likeness on any publicly owned vehicles.

Names and likenesses on educational materials

A public official's name or likeness may not be placed on any educational material that is paid for with public funds.

"Educational materials" are defined in the statute as publications, guides, calendars, handouts, pamphlets, reports or booklets intended to provide information about the public official or governmental office. The term includes information or details about the office, services the office provides to the public, updates on laws and services, and other informational items that are intended to educate the public.

The prohibition against names and likenesses on educational materials does not apply to the submission of a report required to be issued by law.

Agency websites and social media

A public official's name and likeness may appear on a public agency's website. However, the name may appear *throughout* the website only if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency's mission and services rather than to promote the public official. Moreover, a public official's likeness may only appear on the agency's website home page and on any pages or sections devoted to biographical information regarding the public official.

On an agency's social media, a public official's name and likeness may appear if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency's mission and services rather than to promote the public official.

A public agency's website or social media may not provide links or reference to a public official's or public employee's personal or campaign social media or website.

The statute's limitations concerning agency websites and an agency's social media do not apply to personal or non-public agency social media accounts.

Items purchased before June 10, 2016

The Ethics Act allows items or materials purchased before the effective date of the statute (June 10, 2016) to be used internally or to be donated to charity or to surplus. The statute also contains a provision which allows use of prohibited materials publicly if the official's name or likeness is permanently removed or covered.

Exemption from Ethics Commission

A public agency may seek an exemption from specific prohibitions of the name/likeness statute by submitting a written request for an exemption to the Ethics Commission.

The agency must provide evidence that one or more of the prohibitions creates an undue hardship on the agency or that one or more specific prohibitions will cause significant financial impact upon the agency to bring its existing material, vehicles or items into compliance with the statute.

The identity of the agency and the names of affected public officials will be discussed at a public meeting of the Ethics Commission.

Legislative Rule

Effective June 10, 2016, there is no Legislative Rule which relates to the name/ likeness statute.

West Virginia Ethics Commission
210 Brooks Street, Suite 300
Charleston, WV 25301-1804
(304) 558-0664 - FAX (304) 558-2169
ethics@wv.gov www.ethics.wv.gov

Revised 10/19/2016