

## West Virginia Ethics Commission



# Public Officials' Use of Their Name or Likeness Guideline

The Ethics Act includes a section which sets forth limitations on the use of a public official's name or likeness on trinkets, advertising, vehicles, educational materials, websites and social media. 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 statute

Public officials, their agents, or anyone on public payroll may neither place the public official's name or likeness on trinkets paid for with public funds nor use public funds to distribute, disseminate, publish or display the public official's name or likeness for the purpose of advertising to the public.

"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**

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**

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 public.

"Advertising" means publishing, distributing, disseminating, communicating or displaying information to the public through audio, visual or other media tools with the purpose of promoting the public official or a political party. "Advertising" may include, 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.

A public official's name and likeness may be used in a public announcement or mass media communication when necessary, reasonable and appropriate to relay specific public safety, health or emergency information.

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 name/likeness 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 and press releases**

A public official's name or likeness may be placed on any educational material that is paid for with public funds so long as the primary purpose of the material is to provide information about the processes, operations, structure, functions, or history of an agency, agencies, or branch of government, or to provide lists of contact information or other identifying information about a public official.

"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.

Educational materials in which the name and likeness of an official may appear include, but are not limited to, directories, reports, reference books, and legislative publications such as the West Virginia Blue Book and the Legislative Manual.

The name and likeness of a public official may be included in a press release, produced with public funds and which is disseminated by any means, if the press release is intended for a legitimate news or informational purpose and, considered as a whole, does not feature or present the public official in a form, manner, or context which is intended to promote the official. A press release produced with public funds may not request, solicit or promote voting for any official or political party.

A "press release" is defined in the statute as a written, audio, or video communication issued by an official or agency to the public or to members and organizations of the news media to report specific but brief information about an event, circumstance, or other happening.

### **Agency websites and social media**

A public official's name and likeness may appear on a public agency's website and on the agency's social media accounts or pages in any of the following circumstances:

- (1) The public official's name and likeness may appear on the agency's website or social media accounts or pages for the purpose of providing biographical information regarding the public official;
- (2) The public official's name and likeness may appear in educational materials posted or otherwise shared on the agency's website or social media accounts or pages so long as the educational materials comply with the requirements of the educational materials section of the statute (See the educational materials section above);
- (3) The public official's name and likeness may appear in a press release posted or otherwise shared on the agency's website or social media accounts or pages, so long as the press release complies with the requirements of the press releases section of the statute. (See the press releases section above), or
- (4) The public official's name and likeness may appear on the agency's website or social media accounts or pages for any other purpose that is reasonable, incidental or appropriate, and has a primary purpose to promote the agency's mission and services rather than to promote the public official.

These restrictions and requirements do not apply to a public official's personal or non-public agency social media accounts.

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.

### **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**

There is no Legislative Rule which relates to the name/likeness statute.

### **West Virginia Ethics Commission**

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