

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:
Respondent Martin Shaffer

VCRB 2009-01

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Martin Shaffer freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from the above-referenced Complaint.

FINDINGS OF FACT

1. Martin Shaffer (Respondent or Shaffer) was a member of the Clarksburg City Council at all times relevant herein, having been elected in June 2007.
2. At all times relevant herein, the City of Clarksburg (City) used a sealed bid process in the awarding of City contracts. All contracts at issue in this complaint were awarded to the lowest bidder through a sealed bid process.
3. Landscapes Plus, LLC is a business run by Shaffer's son-in-law. Prior to Shaffer's election to City Council, the City awarded a contract to Landscapes Plus as the lowest responsible bidder.
4. Shaffer had a financial interest in Landscapes Plus, LLC. Specifically, Shaffer had pledged \$100,000 to secure a letter of credit for Landscapes Plus on January 17, 2007.
5. Although Shaffer did not profit from any contract that the City awarded to his son-in-law, his assets were at risk if his son-in-law failed to perform, satisfactorily. *MA*
6. Notwithstanding his financial interest in Landscapes Plus, Shaffer attended a City non-mandatory pre-bid meeting on September 6, 2007 on behalf of Landscapes Plus, and otherwise held himself out as a representative thereof.

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7. According to Respondent, he attended the pre-bid meeting with the intent to get more competitive bids on behalf of the City.
8. The City determined that Landscapes Plus was the lowest responsible bidder.
9. Notwithstanding his financial interest in Landscapes Plus, LLC, Shaffer voted on matters that directly affected the financial interest of Landscapes Plus, including to award the contract to Landscapes Plus. According to Respondent, since Landscapes Plus was the low bidder, there was a savings and thus a benefit provided to the City.
10. Respondent has been an elected officer of a civic organization, Glen Elks Development Association, for 15 years before his election to City Council. Historically, the City has funded Glen Elks Development Association.
11. Three weeks before taking office, Respondent loaned \$7,000 to Glen Elks Development Association. Before the loan was repaid, Respondent advocated for the City to fund the Association, although he had a financial interest in the organization. He also served as the Association's unpaid executive director at the time.
12. On May 19, 2010, the Ethics Commission's Probable Cause Review Board found Probable Cause to believe that Respondent violated the Ethics Act.
13. Respondent states that the investigation of the above-captioned complaint has been an educational process in that while none of the actions he took were a knowing attempt to violate the Ethics Act, he understands that he will need to refrain from any similar conduct in the future.
14. Respondent is no longer a member of City Council, having lost his recent re-election bid.

RELEVANT LEGAL PROVISIONS

W. Va. Code § 6B-2-5(b) prohibits a public official from using his or her office for private gain. This Code provision states, in pertinent part:

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.

W. Va. Code § 6B-2-5(d) (1) prohibits a public official from having an interest in a public contract. This Code provision states, in pertinent part:

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...no elected or appointed public official ... or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official ... may have direct authority to enter into, or over which he or she may have control.

W. Va. Code § 6B-2-5(j) (1) provides that public officials may not vote on a matter in which they, an immediate family member, or a business with which they or an immediate family member is associated, have a financial interest.

CONCILIATION OF VIOLATION

I, Martin Shaffer, former City of Clarksburg Council Member, freely and voluntarily acknowledge that public officials should not use their public office for private gain. I further acknowledge that I unintentionally violated the Ethics Act by voting to award Landscapes Plus a City contract. I also acknowledge that I unintentionally violated the Ethics Act when I voted on matters in which I had a financial interest.

I further freely and voluntarily acknowledge that I should not have advocated for City Council to award any contract to Landscapes Plus, due to my financial interest therein. I further freely and voluntarily acknowledge that I should not have advocated for City Council to award any funds to Glen Elks Development Association due to my financial interest therein.

In my defense, I hereby state and affirm that shortly after taking office I contacted the West Virginia Ethics Commission and was advised that I could vote on issues relating to Landscapes Plus so long as I did not have a financial interest therein. I did not believe that pledging a CD as security would be interpreted as having a financial interest in the business.

In order to resolve this matter, I enter into this Agreement. By signing this Agreement, I agree to the imposition of sanctions by the West Virginia Ethics

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Commission. For this Conciliation Agreement to be finalized, the Commission must approve the Agreement and must further determine which sanctions to impose. In consideration for the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

- (1) Public Reprimand; and
- (2) Fine not to exceed \$3,000.

By signing this Agreement, I hereby acknowledge and agree that the Commission will impose only the sanctions listed above. In the event the Commission enters an Order imposing any sanction other than those specifically set forth below, then this Conciliation Agreement is null and void and the case shall proceed to be scheduled for a public hearing on the merits.

I understand that, pursuant to W.Va. Code § 6B-2-4(s), the Conciliation Agreement and Commission Order must be made available to the public.

Date: 7/14/11


Drema Radford, Vice-Chairperson
W. Va. Ethics Commission

Date: 7/5/11


Martin Shaffer, Respondent

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BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

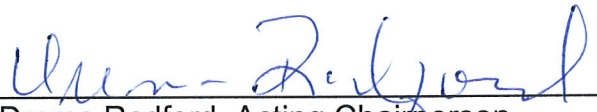
Martin Shaffer, Council Member, City of Clarksburg; Complaint No. 2009-01

COMMISSION'S ORDER

After considering the foregoing FINDINGS OF FACT, RELEVANT LEGAL PROVISIONS and CONCILIATION OF VIOLATION, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and the Respondent, as required by West Virginia Code § 6B-2-4(s). In accordance with West Virginia Code § 6B-2-4(r) and the terms of the Conciliation Agreement, the Commission imposes the following sanctions:

- (1) The West Virginia Ethics Commission hereby **Orders** that Clarksburg City Council Member, Martin Shaffer, should be, and hereby is, **publicly reprimanded** for using his public position for private gain; and
- (2) The West Virginia Ethics Commission hereby **Orders** Respondent Martin Shaffer to pay a **\$3,000.00** fine, payable to the West Virginia Ethics Commission. The fine is to be paid within thirty (30) days of the entrance of this Order.

Date: July 14, 2011


Drema Radford, Acting Chairperson
West Virginia Ethics Commission