

West Virginia Ethics Commission

**2023
Ethics Act Training**

WEST VIRGINIA





Ethics Act

W. Va. Code §§ 6B-1-1 through 6B-3-11

- Use of Office for Private Gain
- Solicitation and Receipt of Gifts
- Name/Likeness (“Trinkets”)
- Prohibited Public Contracts
- Voting
- Conflicts of Interest
- Employment Restrictions
- Financial Dealings



Ethics Act

Political Activities

Does not govern:

- Campaign contributions, expenditures, and reporting requirements - Secretary of State's Office oversees elections
- Eligibility for office

Does govern:

- Financial disclosure statements
- Unlawful use of public office and resources for political campaigns

Financial Disclosures

What is a Financial Disclosure Statement?

Answer: A statement filed with the Ethics Commission containing information required by law. **W. Va. Code § 6B-2-7**
Examples of required info:

- The name of the filer's employer and spouse's employer
- The identification, by category, of every source of income over \$1,000
- Contracts with state, county, municipal, or other local government agencies



Financial Disclosures

What are the filing deadlines?

Answer: Candidates for all state and county offices, including judicial candidates, within 10 days of filing a certificate of announcement, unless the candidate has filed a Disclosure for the previous calendar year.

Where are they filed?

Answer: With the Ethics Commission. Electronic filing.
W. Va. Code § 6B-2-6



Financial Disclosures

W. Va. Code § 6B-2-6

Other required filers are:

(1) All elected officials in this state, including, but not limited to:

- all persons elected statewide;
- all county elected officials;
- municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section;
- board of education members;
- board of education superintendents;

Financial Disclosures

W. Va. Code § 6B-2-6

Other required filers - continued:



(2) All members of state boards, commissions and agencies appointed by the Governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

Financial Disclosures

W. Va. Code § 6B-2-6

Are the Financial Disclosure Statements public documents?

Answer: Yes

Are the Statements on the Commission's website?

Answer: Some are.

- ★ Members of the West Virginia Legislature;
- ★ Elected members of the executive department (Governor, Treasurer, Auditor, Secretary of State, Commissioner of Agriculture, Attorney General);
- ★ Members of the Supreme Court of Appeals, and
- ★ Candidates for these positions.



Financial Disclosures

W. Va. Code § 6B-2-6

Penalties - failure to file

- Subject to administrative prosecution. **W. Va. Code § 6B-2-4**
- Any person who knowingly fails or refuses to file a required Financial Disclosure Statement is guilty of a misdemeanor. **W. Va. Code § 6B-2-10(c)**
- “No candidate for public office may maintain his or her place on a ballot and no public official may take the oath of office or enter or continue upon his or her duties or receive compensation from public funds unless he or she has filed a financial disclosure statement with the state Ethics Commission” **W. Va. Code § 6B-2-6(c)**



Use of Public Office for Private Gain



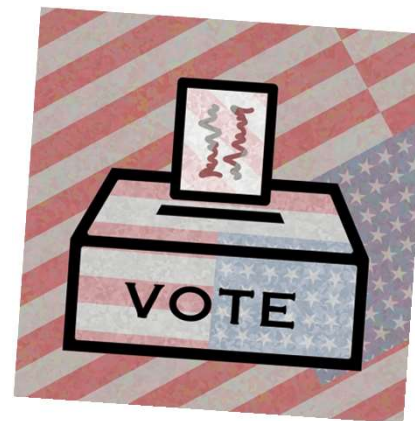
- May not use public resources, including time and subordinate staff, for someone's personal benefit.
- Ethics Act prohibits more than a *de minimis* use for personal purposes.

Private Gain

Political Activities

- Public employees running for office
- Ethics Act does not normally restrict, e.g., a state employee may be a mayor. *AO 2019-21*

But - other rules may apply.





Private Gain

Political Activities

Political endorsements are okay. Example: A sheriff may use his or her title to endorse his or her chief deputy. *AO 2012-15*

****Alert- judicial ethics rules stricter**

Private Gain

Political Activities

Law enforcement uniforms - current officers may not wear or use in campaign material. *AO 2019-14*



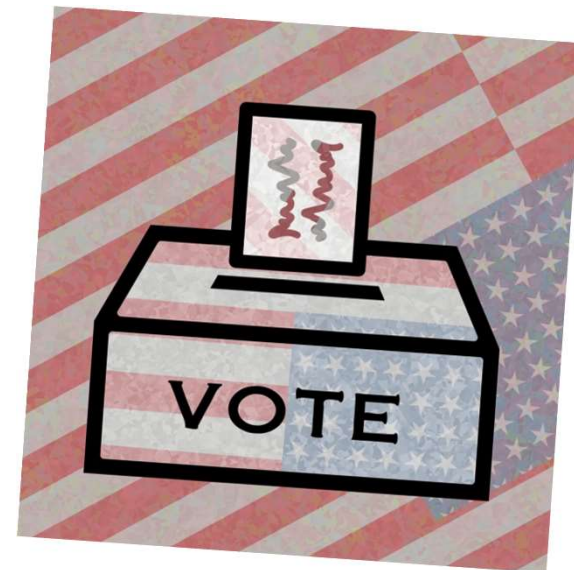
Private Gain

Political Activities

May a state employee seek election to the state office that regulates elections while being employed by that same office?

Answer: Yes

AO 2023-03



Private Gain

Political Activities

A state community and technical college employee asked whether he may serve in the West Virginia Legislature while being employed by the college as a professor.

Answer: Yes, but other laws may prohibit.

AO 2023-09



Private Gain

Political Activities

Political activities before or after official public work events. Be careful.

One: the primary purpose of the trip is for official state business,

Two: the trip is not being used as a pretext to engage in non-state business, and

Three: any additional meals, lodging, or other travel expenses that the Governor incurs in serving a secondary purpose, e.g., a campaign or personal function, must be paid by the source associated with the secondary purpose.

AO 2020-04 - General rules established for Governor (or other public officials).

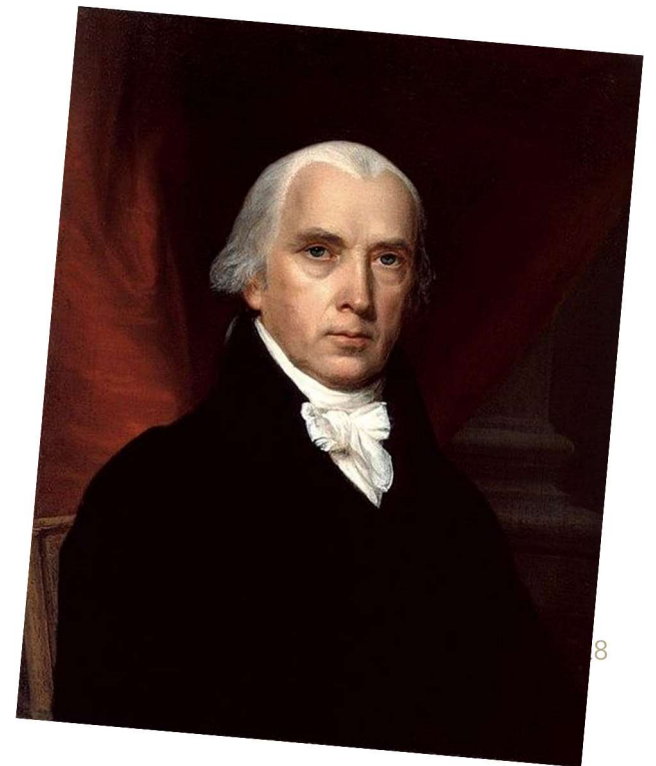


Use of Public Office for Private Gain

Candidate Forums

College professor may not exclusively invite and allow one candidate to speak to a class at a public college about his or her platform without giving other candidates in the same political race the same opportunity.

AO 2021-06



Public Official's Name or Likeness

May not use public funds or public resources to display the public official's name or likeness for the purpose of promoting public official or political party.

W. Va. Code § 6B-2B-2(b)



Limitations on Public Official's Name or Likeness



A town employee may bring a cup that contains a campaign slogan to work at Town Hall.

But may not display the slogan on her desk to the public.
(use of public resources to promote a political party.)

AO 2021-19

Public Official's Name or Likeness

May use name on letterhead, envelopes, educational materials, reports, certificates, office signs, press releases, bios, social media, and websites



Public Official's Name or Likeness

Effective on June 6, 2022, and codified in new Code sections, **W. Va. Code §§ 5-6-4, 7-3-19, and 8-12-22**, the law prohibits state, county, and municipal entities from dedicating or naming any public building or public structure for a public official who is currently holding office. (H.B. 3223)



Use of Public Office for Private Gain

Prestige of Office

Circuit Clerk trying to convince arresting police officer not to take him to jail.



- Statements like “You know I am the Circuit Clerk.”
- Threats to retaliate against the arresting officer.

Agreed to settlement

Use of Public Office for Private Gain

Unauthorized Spending

- The Ethics Commission only has authority to determine whether a proposed expenditure violates the private gain provision of the Act.
- The Commission considers, among other factors, whether the proposed expenditure is authorized elsewhere.
 - W. Va. Code
 - Legislative Rules
 - Attorney General Opinions
 - Auditor Opinion Letters
 - Agency's attorney



Gift Rules

No Gifts over \$25 from Interested Persons

An interested person is:

- A Lobbyist

Or one who:

- Seeks or does business with the public servant's agency (vendor);
- Is regulated or controlled by the agency; or
- Has a specific financial interest which may be substantially affected by the performance or nonperformance of official duties.



Gift Rules

Some Exceptions!

- Meals and beverages of any value if the person purchasing them is present
- Ceremonial gifts with insignificant value – for example, a plaque
- Reasonable travel, meals and lodging expenses for being a speaker at a conference or benefit performance of public job
- Gifts that are purely private in nature

Ethics Commission Gift Guideline – outlines other exceptions

Gift Rules

Public Park employees may accept gifts valued at over \$25 per calendar year from the **Park's Foundation** because the Foundation is not an interested person of the Public Park for purposes of the gift restrictions in the Ethics Act and related Legislative Rule. *A.O. 2022-20*



Gift Rules

Judges - gift rules

Judicial Investigation Commission Advisory Opinion 2021-21. **Gifts permissible if the value of the gifts within the Ethics Act gift limits.**



Prohibited Interest in Agency Contracts

W. Va. Code § 6B-2-5(d)

Public servants may not have a financial interest in a public contract under their authority or control.



Prohibited Contracts Exceptions

W. Va. Code § 6B-2-5(d)

- \$1,000 threshold
- Part-time appointed officials and legislators are not subject to prohibition but must recuse themselves if a conflict arises.
- Public employment.



Confidential Info

W. Va. Code § 6B-2-5(e)

No present or former public official or employee may disclose confidential information or use that information to further his/her personal interests or the interests of another person. [Address, SS#, credit card, driver's license and marital status]

Improper disclosure of confidential information is a criminal misdemeanor!



Executive Session

Open Meetings Advisory Opinion 2022-01

The Open Meetings Act does not make information discussed during executive sessions confidential; nor does it create an excessive session privilege. Other rules and laws may create a duty of confidentiality.



Employment Restrictions

W. Va. Code § 6B-2-5(h)

Full-time public employees and officials may not seek employment with, or buy, sell or lease property to or from, any person who:

- Had a matter on which they or their subordinate took regulatory action within the past 12 months, or
- Currently has a matter before their agency on which they or a subordinate is working, or
- Is a vendor over which they exercise control

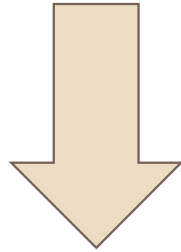


AO 2019-17 and AO 2020-05

Employment Restrictions

Exemption Available

Employment Exemptions



Issued by the Ethics Commission
(temporary issued by Executive Director)



Allows full-time public servants to seek employment while in current public position - See Guideline -- *How to Obtain an Employment Exemption before Looking for a New Job*

Property Restrictions

W. Va. Code § 6B-2-5(h)

Full-time public employees and officials may not seek employment with, or buy, sell or lease **property** to or from, any person

Similar to employment rules

Exemptions may be granted



Employment Restrictions

W. Va. Code § 6B-2-5(h)

May a Sheriff be privately employed as a security officer during his off-duty hours to provide security services in the same county in which he is Sheriff?

Answer: Okay under Ethics Act if employer does not currently have matter pending before him or his subordinates. **But other laws may restrict.**

AO 2023-01

Use of Public Office for Private Gain

Nepotism

May a prosecutor employ a spouse as assistant prosecuting attorneys?

Answer: Yes, as long as the Act's nepotism provision and the applicable Legislative Rule are followed.



Employment Restrictions

W. Va. Code § 6B-2-5(h)

May a Regional Housing Authority Executive Director accept a stipend from a Home Loan Bank for serving on its Affordable Housing Advisory Council?

Answer: Okay to accept if the bank does not currently have a matter with the authority and she performs the work on her own time.

AO 2023-02

Gifts

A Compliance Officer for a State Agency asks under what circumstances the State Agency may give cultural or sporting event tickets, obtained by the agency per the terms of advertising and sponsorship contracts, to public officials, public employees, friends, or family members.

Answer: Okay to give to employees and officials working at the event. Tickets become state property.

AO 2023-05



Gifts

A County School Superintendent asked whether he may accept payment from a private company that manufactures electric school buses for food, lodging, and travel expenses related to his service as a panel member at the company's conference.

Answer: Yes. If overriding public benefit then okay and not prohibited endorsement.

AO 2023-07



Sanctions

W. Va. Code § 6B-2-4(s)(1)

- Public reprimand
- Restitution
- Fines of \$5,000 per violation
- Reimbursement to the Commission
- Recommendation that a Respondent be terminated from employment or removed from office.

How to Seek Advice

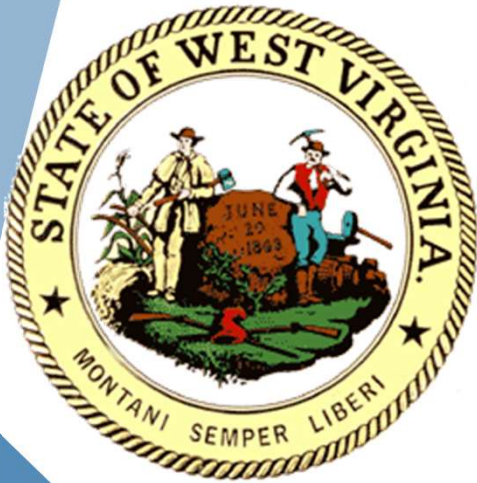
Call

Email

Request a formal Advisory Opinion



West Virginia Ethics Commission



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