

West Virginia Ethics Commission

2020 Annual Report



West Virginia Ethics Commission
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Duties of the Ethics Commission

The Ethics Commission interprets and enforces the West Virginia Governmental Ethics Act. The purpose of the Act is to preserve the public's confidence in the integrity and impartiality of governmental actions. The Commission also interprets the Open Governmental Meetings Act (W. Va. Code §§ 6-9A-1 through 6-9A-12); W. Va. Code § 61-10-15, a criminal misdemeanor statute, and W. Va. Code §§18-5-1a(a) and (b) relating to eligibility to serve on a county school board.

The Commission enforces the Ethics Act's prohibitions through the Verified Complaint and Initiated Complaint processes; administers lobbyist registration and reporting provisions; publishes an annual Lobbyist Directory; renders formal Advisory Opinions on the meaning and application of the Ethics Act and the Open Governmental Meetings Act; issues formal Advisory Opinions to county school board members and candidates for those boards regarding other elected or appointed positions potentially barring their service; administers the Code of Conduct for State Administrative Law Judges; processes Financial Disclosure Statements, and advises and educates public employees, public officials, and members of the public regarding the Ethics Act and the Open Governmental Meetings Act. The Commission also grants exemptions from the employment and contract prohibitions in the Ethics Act.

All Complaints are considered by the three-member Probable Cause Review Board, which is an autonomous board not under the direction or control of the Ethics Commission. The Review Board reviews Complaints filed with or initiated by the Ethics Commission to make a threshold determination of whether probable cause exists to believe that a violation of the Ethics Act has occurred.

Commission Members

The members of the West Virginia Ethics Commission are appointed by the Governor with the advice and consent of the Senate. W. Va. Code § 6B-2-1(a). Members serving in 2020 are:

Robert J. Wolfe, Chairperson
Man, WV

Lindsey Ashley
Pineville, WV

Lynn Davis
Wellsburg, WV

Karen Disibbio
Bluefield, WV

Robert Harman
Keyser, WV

Suzan Singleton
Moundsville, WV

Larry Tweel¹
Huntington, WV

Terry Walker
Kearneysville, WV

Monté Williams
Morgantown, WV

¹ Served through June 30, 2020

Probable Cause Review Board Members

The members of the Probable Cause Review Board are appointed by the Governor with the advice and consent of the Senate. Members in 2020 are:

James E. Shepherd, II, Chairperson
Huntington, WV

Daniel J. Guida
Weirton, WV

Michael A. Kawash
Charleston, WV

Staff

The staff of the Ethics Commission consists of the Executive Director, two full-time attorneys, two part-time attorneys and two full-time administrative assistants.

Rebecca L. Stepto²
Executive Director

Derek A. Knopp³
Staff Attorney

Kimberly B. Weber⁴
General Counsel
Executive Director

John E. Roush⁵
Staff Attorney

Andrew R. Herrick
Staff Attorney

Teri L. Anderson
Lobbyist Registrar

Theresa M. Kirk⁶
Staff Attorney
General Counsel

M. Ellen Briggs
Executive Assistant

² Executive Director until July 31

³ Resigned effective September 25

⁴ General Counsel until October 10; Interim Executive Director beginning August 1; Executive Director beginning September 4

⁵ Began employment December 1

⁶ General Counsel beginning October 12

Budget

The Ethics Commission was allocated the following amounts from the General Revenue Fund for the following fiscal years:

2020-2021	\$ 719,844.00
2019-2020	\$ 719,844.00
2018-2019	\$ 701,706.00
2017-2018	\$ 687,840.00
2016-2017	\$ 691,813.00
2015-2016	\$ 706,575.00

Informal Advice

Public servants may seek informal advice from the Ethics Commission staff by contacting the Commission or by sending an email to ethics@wv.gov. If staff is unable to answer a question based upon the language in the statute at issue (the Ethics Act, the Open Meetings Act, or other statutes which the Commission has jurisdiction to interpret), a Commission Guideline, or an Advisory Opinion, staff may recommend that the public servant request a new Advisory Opinion.

The following is a summary of the number of requests for informal written advice received by the Commission during the past five years:

2020	451
2019	391
2018	414
2017	391
2016	476
2015	475

The following is a summary of the number of requests for oral advice, usually over the telephone, during the past four years:

2020	1,225
2019	1,496
2018	1,450
2017	1,336

Formal Opinions/Exemptions

The Ethics Commission issues formal Advisory Opinions which respond to questions relating to the application of the Ethics Act. The Commission also issues Opinions regarding W. Va. Code § 61-10-15 (to county officials relating to county officials' interests in contracts) and regarding W. Va. Code § 18-5-1a (to county board of

education members, members-elect, and candidates for election to board regarding whether they may hold certain other public positions and serve on a county board).

In addition, two of the Commission’s Committees are authorized to issue Advisory Opinions. The Committee on Open Governmental Meetings issues Advisory Opinions which interpret the Open Governmental Meetings Act. The Committee on Standards of Conduct for State Administrative Law Judges issues Advisory Opinions regarding the Code of Conduct for Administrative Law Judges.

The following are the totals over the past five years of formal Advisory Opinions issued regarding the Ethics Act and W. Va. Code § 61-10-15, the Open Governmental Meetings Act, the ALJ Code of Conduct, and county school board eligibility, as well as formal Contract and Employment Exemptions granted or denied by the Commission.

Subject Matter	2015	2016	2017	2018	2019	2020
Ethics (and W. Va. Code § 61-10-15)	24	15	21	9	28	13
Open Meetings	3	3	2	2	4	0
ALJ Code of Conduct	0	0	0	0	1	0
Contract Exemptions	3	5	7	6	4	7
Employment Exemptions	18	47	34	69	57	28
Property Exemptions	0	0	1	1	0	0
School Board	0	0	1	0	0	0
TOTAL:	48	70	66	87	94	48

Ethics Act 2020 Advisory Opinions

Advisory Opinion 2020-01 – A State Agency

Categories: Private Gain; Employment

A State Agency asked whether one of its technicians could perform private services after hours to individuals to whom the technician also provided services as part of the technician’s public job responsibilities. The Ethics Act prohibits public employees from being employed by persons who have a “matter” on which the public employee or a subordinate of the employee is working. W. Va. Code § 6B-2-5(h)(1)(B).

The Ethics Commission determined that providing routine services in the form of technical assistance and recommendations to individuals on how to install best land management practices do not constitute “matters” under W. Va. Code § 6B-2-5(h)(1)(B). The Commission held, however, that verifying individuals’ management practices for payment pursuant to a cost-share program and that completing program ranking forms used to score individuals’ program applications did constitute “matters” under the

provision. The technician, therefore, could not provide private services to people in the latter category.

The Ethics Commission also held that the Ethics Act's prohibition on the use of office for private gain prohibited the technician from including "licensed pesticide applicator" on his state job e-mail address when the certification was wholly unrelated to the technician's job duties and when the technician was seeking to provide pesticide services as part of a private business venture.

Advisory Opinion 2020-02 – withdrawn

Advisory Opinion 2020-03 – A State Appeals Board member

Categories: Private Gain; Conflict of Interest

The Ethics Commission reaffirmed that a Political Party Executive Committee member is not a public official or employee and, therefore, is not subject to the Ethics Act.

The Requester, as an appointed member of a state Appeals Board, is, however, a public official for purposes of the Ethics Act. Therefore, the issue before the Commission was whether the Ethics Act prohibits a member of the state Appeals Board from serving on a state Executive Committee, a nonpublic office.

The Commission held that the Act does not prohibit a state Appeals Board member from serving as a member of a Political Party Executive Committee. While nothing in the Ethics Act prohibits a public official from serving as a member of a Political Party Executive Committee, the Commission has no jurisdiction to rule whether other laws or policies may prohibit it.

Advisory Opinion 2020-04 – The Governor

Category: Private Gain

The Governor asked (1) whether he may use state aircraft to fly from Lewisburg where he has a home to destinations outside of Charleston on official state business, and (2) whether he may participate in campaign activities following his state work and before his return flight provided that the primary purpose of the travel is for official state business and there is no additional use of the aircraft for campaign-related travel ("mixed purpose trips.").

The Opinion examined whether there is *express authority* for a governor to use state aircraft in these ways and found no such authority. The Opinion then examined whether there is *implied authority* for the Governor to use state aircraft in these ways or whether such use is consistent with the usual and customary duties of a governor. The Commission reviewed the laws and Opinions in other states for guidance on when a governor's use of state aircraft is permissible. The Commission held that the Governor

in West Virginia, under W. Va. Code § 6B-2-5(b)(1), has implied authority to use state aircraft for trips to and from Lewisburg to destinations outside of Charleston on official state business and that such travel is consistent with the usual and customary duties of a governor under the following conditions: (1) the primary purpose of the flight from Lewisburg is justified by an official public policy reason, e.g., security or scheduling needs, and not merely for the convenience of the Governor; (2) the flight from Lewisburg is not being used as a pretext to engage in non-state business, and (3) the Governor must document the specific justification for using state aircraft for each flight between Charleston and Lewisburg.

With regard to “mixed purpose trips,” the Commission held that the Governor has implied authority which is consistent with the usual and customary duties of a governor to participate in personal and campaign activities following his state work and before his return flight in state aircraft under the following conditions: (1) the primary purpose of the trip is for official state business; (2) the trip is not being used as a pretext to engage in non-state business, and (3) 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 that secondary purpose.

Advisory Opinion 2020-05 – A part-time State Board member

Category: Private Gain

A part-time State Board member may be employed by a professional association whose members are regulated by the State Board on which he serves. The Board member may not knowingly and improperly disclose any confidential information acquired in the course of his official duties. While the Board member states that he will not be lobbying on behalf of the private association, the Board member must be cognizant of the restriction in the Ethics Act on a lobbyist participating in any decision as a member of a state board if the lobbyist may receive direct, personal economic or pecuniary benefit from a decision of that board.

The Opinion overrules Advisory Opinion 2013-60 and reaffirms that, in general, no provision in the Ethics Act prohibits a part-time state board member from being employed in the public or private sector.

Advisory Opinion 2020-06 – A County Commission

Category: Voting

County Commissioners may participate in determining the validity of a lien against an estate for delinquent emergency ambulance service fees because the individual County Commissioners do not generally have a financial interest in the probate of estates.

County Commissions may file judgment liens against any property in the county with delinquent emergency ambulance service fees. County Commissions also review and

approve an estate's final settlement and order an estate to be closed. Any financial interest in a lien against an estate that owes special emergency ambulance fees is held by the County Commission as a governmental entity, not through the individual County Commissioners. Therefore, unless a County Commissioner has a financial interest in a particular estate, the Ethics Act's voting provision would not prevent a County Commissioner from participating in the probate of an estate.

Advisory Opinion 2020-07 – A City Council member

Category: Voting

A City Council member may vote on the City's budget which contains a line-item appropriation of \$1,500 to her employer, a County Public Library. The County Library system had 13 full-time employees and the City's appropriation was for community programs and supplies at the Library branch in the City. The Commission held that the City Council member did not have a financial interest which required her recusal because 1) it is an appropriation to a public agency and 2) she is affected as a member of, and to no greater extent than, any other member of a class of five or more Public Library employees

Advisory Opinion 2020-08 – A Chief Deputy Sheriff

Categories: Private Gain

A Chief Deputy Sheriff asked whether her badge is considered part of her uniform and whether the badge may be included in photographs of her in campaign material. In Advisory Opinion 2019-14, the Ethics Commission held that a city police officer may not include pictures of himself in uniform in his campaign material because the uniform conveyed the endorsement of his police agency. The Chief Deputy's photograph did not include her uniform as she was wearing a polo and khakis, but her badge and firearm were visible.

The Ethics Commission held that the badge may not be included in campaign pictures since the badge represents the same indicia of authority as the uniform does. The Opinion pointed to several sections of the West Virginia Code which contemplate that a badge and uniform are to be treated similarly. This Opinion is prospective only.

Advisory Opinion 2020-09 – A Retired City Police Officer

Category: Private Gain

The Ethics Act does not prohibit a retired City police officer who is also a candidate for sheriff from wearing his uniform in his campaign material. In Advisory Opinions 2019-14 and 2020-08, the Commission considered whether current law enforcement officers may include pictures of themselves in uniform or with their badge in their campaign materials and held that they may not.

With few exceptions, however, the provisions of the Ethics Act, including its private gain provision, do not apply to former or retired public officials or employees. They only apply to the conduct of a person while he or she is holding a public office or employed as a public employee. In this instance, the Act applies to the Requester's conduct while he was working as a City police officer but not after he retired.

The Opinion notes that other laws, which the Ethics Commission does not have authority to interpret or enforce, may apply.

Advisory Opinion 2020-10 – A City Manager

Category: Gift

The Ethics Act prohibits a city police officer from accepting an all-expense paid trip to an annual sales meeting of a company that manufactures armored vest purchased by the officer's police department.

The Ethics Act prohibits a public employee from accepting, directly or indirectly, gifts from anyone who is doing or seeking to do business of any kind with the employee's agency. The city police department outfitted all its officers with an armored vest from the company and purchased the company's vests through a retailer each year for new officers. The company also had visited the department three times since 2018 to both replace vests that had been shot and to provide a demonstration of its vests' effectiveness.

Finally, no exception to the Ethics Act's gift prohibition operated to permit the officer to accept the all-expense paid trip.

Advisory Opinion 2020-11 – Town Clerk

Category: Gift

Town officials and employees may solicit donations from individuals and businesses for the charitable purpose of constructing a veterans memorial.

A town was planning to construct a veterans memorial on property that would be leased to the town by a state agency. The veterans memorial would list the names of people who served in the United States Armed Forces from the Town and surrounding area on three monuments in the shape of stone tablets placed in a chevron pattern. The Town asked whether it could raise funds by soliciting donations from individuals and businesses.

W. Va. Code § 6B-2-5(c)(1) provides that public officials and public employees may not solicit any gift unless the solicitation is for a charitable purpose. The Ethics Commission held that because the veterans memorial serves a public purpose, its construction is a

charitable purpose, as that term is used in the Ethics Act, for which the town officials and employees may solicit donations.

Advisory Opinion 2020-12 – County Commissioner

Category: Voting

The Ethics Act does not prohibit a County Commissioner from participating as a member of the Board of Canvassers for an election when the commissioner is also a candidate in the election.

The canvass is a proceeding required by law in which the materials, equipment, and results of an election are reviewed, corrected, and officially recorded prior to the certification of that election. West Virginia law requires county commissioners to serve as a board of canvassers. The West Virginia Supreme Court has also delineated the duties of a canvassing board as chiefly ministerial.

West Virginia's election code directly addresses the subject matter of when and to what extent a county commissioner may participate in canvassing an election as well as subsequent recounts and election contests when said county commissioner is also a candidate in the election. State law does not permit candidates to assist in recounts and further prohibits county commissioners from judging election contests. Significantly, the Legislature imposed no limitations for a county commissioner conducting an initial canvass.

The Ethics Commission declined to construe the Ethics Act's voting provision to prohibit county commissioners from carrying out a canvassing board's mandatory ministerial duties when the Legislature declined to limit such participation in the state's election code. Moreover, given the Supreme Court's declaration that a canvassing board's duties are ministerial, the Ethics Commission found it difficult to apply the Ethics Act's voting prohibition to those duties when the plain meaning of the word "vote" includes the "expression of one's preference or opinion."

Finally, the Opinion made clear that the Commission's decision was to be contrasted with county commissioners improperly judging an election contest or otherwise acting contrary to this state's election law. To be clear, there are occasions when the handling of an election process could give rise to a violation of the Ethics Act.

Advisory Opinion 2020-13 – Principal

Category: Nepotism

A school principal's spouse, sister and brother-in-law may be employed at the same school where he serves as the principal, but he may not be involved in hiring or supervising them.

The principal is employed by a board of education in a small county which has two schools. He serves as a principal at the elementary school. At the time he was hired, his sister and brother-in-law were already working at the school.

In 2019, the board of education posted a job opening at the same school for a teacher. The principal's spouse applied, and the board of education hired her. Neither the principal nor any of his relatives were involved in the decision to hire him or his spouse.

The board of education's curriculum director supervises and evaluates the principal's spouse and sister, while the superintendent supervises and evaluates his brother-in-law.

The Ethics Commission held that, pursuant to W. Va. Code § 61-10-15(a), the Ethics Act, and related Legislative Rule, a principal's spouse, sister, and brother-in-law may be employed in the same school where he or she serves as principal, but that the principal may not be involved in hiring them and must comply with the nepotism restrictions in the Ethics Act and Legislative Rule.

Advisory Opinion 2020-14 – Sheriff

Category: Private Gain

The Sheriff's Office has a K-9 who lives with the deputy who is his handler at his personal residence. The Sheriff's Office covers the expenses of the K-9, including dog food, a chain-link kennel, and other items needed for the care of the K-9. The K-9 handler was moving from a rural part of the county to an incorporated municipality in the county where he had purchased a house. The handler planned to keep the K-9 outside in a portable, chain-link kennel at his new house, just as he had at his old house.

As the K-9 handler would be living in a municipality, the handler was concerned that a passerby may attempt to pet the K-9 or stick his or her fingers in the kennel which could result in injury to the passerby or the K-9. To guard against this risk, the K-9 handler had requested that the Sheriff's Office purchase a fence to install around the portable, chain-link kennel at his new residence. The estimated cost of the fence was \$2,700.

The Ethics Commission held that it does not violate the Ethics Act for a Sheriff's Office to use a reasonable amount of public funds to install a fence on a K-9 handler's private property for the purposes of protecting the public and the K-9 and limiting the potential liability exposure of the County. The County must take steps to ensure that the K-9 handler is not unjustly enriched if he or his K-9 leaves the service of the Sheriff's Office.

Open Meetings Advisory Opinions

The Commission's Committee on Open Governmental Meetings issues written Advisory Opinions to governing bodies, or to its members, on whether an action or a proposed

action violates the Open Meetings Act. The Committee issued no Open Meetings Act Advisory Opinions in 2020.

Contract Exemptions

The Ethics Act prohibits public officials and full-time public employees from having a financial interest in certain contracts, purchases, or sales over which their public position gives them control. The Commission has authority to grant a governmental entity an exemption from the Act's contract provisions.

The Commission granted or denied Contract Exemptions during 2020 in the following matters:

CE 2020-01 – Town of Fairview

The Ethics Commission granted an exemption to the Town of Fairview to contract with Council members Don Pyles and Johnny Knotts to perform work for the Water Department and Street Department, respectively, at the rate of \$8.75 per hour in an amount not to exceed \$2,000 each in the 2020 calendar year.

The Town stated that they needed to hire Pyles and Knotts because the Town was short-staffed. Further, the Town advertised both positions and received no applications.

CE 2020-02 – Town of Fairview

The Ethics Commission granted an exemption to the Town of Fairview authorizing it to continue temporarily leasing a building from Council member Johnny Knotts pursuant to the terms of the current lease, \$300 per month with the Town paying for utilities, insurance, taxes and maintenance. The Town states that the building is the only suitable, available space close to the current Town Hall which the Town has vacated while it is being remediated and repaired. The Town may not, however, make any capital improvements to the leased building. The Contract Exemption is effective until January 15, 2021.

CE 2020-03 – City of Bridgeport Development Authority

The Ethics Commission granted an exemption to the Bridgeport Development Authority authorizing it to sell real property to Energy Plaza Partners, LLC, a company in which the Mayor of Bridgeport has a 50 percent membership interest. The Commission found that prohibiting the Authority from selling the property to Energy Plaza Partners would result in undue hardship or other substantial interference to the Authority's operations because the property is located in a floodplain; it is surrounded by property owned by Energy Plaza Partners; the only bid the Authority received to purchase the property was from Energy Plaza Partners; and the bid met the appraised value of the property.

The Commission reasoned that prohibiting the Authority from selling the property would require the Authority to both retain property it does not wish to develop and forego the opportunity to sell the property at fair market value.

CE 2020-04 – Town of Reedsville

The Ethics Commission granted an exemption to the Town of Reedsville to contract with Brown's Mill Excavating, LLC, a company owned by its Mayor, for a tree trimming project. Dead limbs present on large trees within the Town Park had become a safety issue for residents. The Commission found that the Town took meaningful efforts to obtain quotes or bids from other qualified area businesses willing and able to perform the tree limb removal in October 2018 and again in April 2020. Despite these efforts, the Town did not receive any bids.

The Commission therefore found that prohibiting the Town from contracting with the Mayor's company would result in undue hardship and granted the exemption request in an amount not to exceed the company's bid amount of \$4,488.

2020-05 – Pleasants County Development Authority

The Ethics Commission granted an exemption to the Pleasants County Development Authority to lease space at a business park to a candy manufacturing business owned by Mike Smith, a Pleasants County Commissioner. The Development Authority will be ineligible for \$375,000 in funds from the West Virginia Division of Highways and the West Virginia Development Office to build an industrial access road to the site and a \$2.5 million to \$3 million grant from the federal EDA to finance the construction of a multi-tenant building at the site if it does not have a commitment from a manufacturing company to locate at the Business Park. Smith Candy is the only manufacturing business currently willing to commit to becoming a tenant at the Business Park.

The Ethics Commission held that prohibiting the Development Authority from leasing space at the Business Park to Smith Candy will result in excessive cost or undue hardship to the Development Authority. The Contract Exemption is effective until July 1, 2024, and the Development Authority and Commissioner Smith must comply with the limitations in the Exemption.

CE 2020-06 – withdrawn

CE 2020-07 – Clay County Solid Waste Authority

The Ethic Commission granted an exemption to the Clay County Solid Waste Authority to purchase property located at 104 Main Street, Clay, West Virginia, for \$38,000 from Gregory Fitzwater, a Clay County Commissioner.

The Authority had been searching for office space for at least 15 years and could not find other suitable, affordable office space. Further, it has been occupying space that is

unsuitable for its needs and a health risk to the Board members, its employees, and the public. The Commission found that prohibiting the SWA from purchasing the property would result in undue hardship or other substantial interference with its operations.

CE 2020-08 – Clay County Commission

Ethics Commission granted the Clay County Commission an exemption to allow it to contract with King's Trucking & Wrecker Services, a business owned by Fran King, a Clay County Commission, in an amount not to exceed \$3,500 from November 7, 2020, through November 7, 2021, to tow County ambulances and other emergency vehicles when King's is the closest towing service to the wreck.

The Commission found that Clay County would incur increased costs and additional wait times up to an hour if it is unable to use King's for wrecker services in Clay County for County emergency vehicles.

Property Exemptions

A full-time public official or full-time public employee who would be adversely affected by the Ethics Act's prohibitions against purchasing, selling or leasing real or personal property to certain persons or entities may apply to the Ethics Commission for an exemption from the prohibition. The Commission issued no Property Exemptions in 2020.

Employment Exemptions

The Ethics Act prohibits full-time public servants from seeking or accepting employment from persons or businesses that they or their subordinates regulate, or from seeking or accepting employment from vendors if the public servant, or his or her subordinates, exercise authority or control over a public contract with that vendor.

Public servants may request an exemption from the Ethics Commission to seek employment with vendors or regulated persons over whom they or a subordinate exercise control at present or in the prior 12 months.

The following Employment Exemptions were granted during 2020:

- EE 2020-01** Jennifer Eva, a Program Manager I for the Department of Health and Human Resources, Bureau for Medical Services
- EE 2020-02** Samuel J. Perris, Construction Office Manager, Department of Transportation, Division of Highways
- EE 2020-03** Christopher M. Miller, Realty Manager – Relocation/Property Management, Right-of-Way Division, Department of Transportation, Division of Highways

- EE 2020-04** Nawamee Shrestha, Signing and Lighting Design Engineer, Department of Transportation, Division of Highways
- EE 2020-05** Adam Crites, Transportation Engineering Technician-Senior, Department of Transportation, Division of Highways
- EE 2020-06** Adrian Bernatowicz, Regional Program Manager/Maintenance Assistant, Department of Transportation, Division of Highways
- EE 2020-07** Robert D. Moore, Realty Manager, Chief of Acquisition, Department of Transportation, Division of Highways
- EE 2020-08** Duane B. Blevins, Highway Engineer Trainee – District Construction Area Engineer, Department of Transportation, Division of Highways
- EE 2020-09** David Ferrell, Highway Engineer Project Supervisor, Department of Transportation, Division of Highways
- EE 2020-10** Larry Shea, Highway Engineer Associate, Department of Transportation, Division of Highways
- EE 2020-11** John P. Hundagen, Transportation Engineering Technician-Senior, Department of Transportation, Division of Highways
- EE 2020-12** Richard Chase Aliff, Transportation Engineering Technician-Senior, Department of Transportation, Division of Highways
- EE 2020-13** James S. Williamson, II, Transportation Engineering Technician, Department of Transportation, Division of Highways
- EE 2020-14** Marvin W. Carder, Jr., District 6, Construction, Area Supervisor, Department of Transportation, Division of Highways
- EE 2020-15** Keith Woodruff, Transportation Engineering Technician, Department of Transportation, Division of Highways
- EE 2020-16** Michael R. Jones, Chemist III, Department of Transportation, Division of Highways
- EE 2020-17** John E. Taylor, Assistant Director, Logistics & Technology, Department of Transportation, Division of Highways
- EE 2020-18** Cameron E. Barkley, District 8, Area Construction Engineer, Department of Transportation, Division of Highways
- EE 2020-19** H. Jack Conley, Jr., Assistant Construction Engineer, Department of Transportation, Division of Highways
- EE 2020-20** Tony Atkins, Deputy Commissioner, Bureau for Medical Services
- EE 2020-21** Jason Fauber, Project Development Unit Leader, Department of Transportation, Division of Highways
- EE 2020-22** J. Barry Hatfield, II, Acting Bridge Design and Repair Engineer, Department of Transportation, Division of Highways
- EE 2020-23** Randall R. Short, Deputy Director, Utilities Division, Public Service Commission
- EE 2020-24** Anthony E. Clark, District Engineer/Manager, Department of Transportation, Division of Highways
- EE 2020-25** Jeff Wiseman, Executive Assistant for the Agency Head, Department of Health and Human Resources
- EE 2020-26** Jason M. Boyd, District Director, Department of Transportation, Division of Highways

EE 2020-27 Steven B. Cole, District Engineer/Manager, Department of Transportation, Division of Highways

EE 2020-28 Andrew Howard, Financial Institutions Examiner, Assistant, Division of Financial Institutions

Enforcement

The Ethics Commission enforces the West Virginia Ethics Act through an administrative Complaint process. Anyone may file a Complaint, and the Commission itself may initiate Complaints against a person subject to the Ethics Act.

All Complaints are considered by the three-member Probable Cause Review Board, which initially determines whether the allegations in the Complaint, if taken as true, state a material violation of the Ethics Act. Complaints which do state a material violation of the Act are investigated, and those that do not are dismissed.

Complaints which allege trivial or inconsequential violations or were filed outside of the statute of limitations are dismissed.

Public hearings are held in matters in which there is probable cause to believe that a violation of the Act has occurred. However, persons against whom Complaints are filed may enter into a settlement of the allegations through a Conciliation Agreement with the Commission.

Persons found to have violated the Ethics Act may be publicly reprimanded, fined up to \$5,000 per violation, ordered to pay restitution and/or ordered to reimburse the Commission for its costs of investigation and prosecution. The Commission also may recommend that the person be removed from office or that his or her public employment be terminated.

Complaints

Calendar year	Total Complaints filed	Initiated by Commission (of total filed)	Dismissed without investigation	Investigated	Dismissed after investigation	Resolved via Conciliation Agreement
2020	127	0	81	37	40	9
2019	105	0	35	65	50	6
2018	76	4	32	45	37	8
2017	85	5	61	30	24	4
2016	108	0	58	49	54	7

*Note that Complaints may not have been resolved in the year in which they were filed.

Staff- initiated Investigations

The Commission may initiate complaints and make investigations even in the absence of a verified Complaint by a citizen.

Calendar Year	Total Staff-Initiated Investigations	Total Complaints filed by Commission
2020	28	0
2019	27	0
2018	29	4
2017	19	5
2016	12	0

Public Hearings

No public hearings were held during 2020.

Conciliation Agreements

VCRB 2018-62: Larry Palmer, Sheriff, Brooke County

On July 14, 2018, Palmer drove a Sheriff's Office cruiser to a Rural King store in nearby Steubenville, Ohio, and purchased items for his personal use. His shopping cart accidentally got away from him in the parking lot and struck and damaged a parked vehicle.

Palmer left the parking lot without attempting to locate the vehicle's owner. The investigating police officer determined that it was Palmer who had caused the damage with his shopping cart. The officer called the Sheriff's Office and Palmer stated that he would contact the vehicle owner and make the matter right. The officer prepared an investigation report and took no further action. Palmer contacted the owner, who gave him a repair shop bill for \$1,969.24. Rather than paying the bill himself, Palmer submitted it to the Brooke County Commission for payment.

When asked about the incident by a County Commissioner, Palmer denied that the investigating officer had prepared an accident report. Palmer submitted a letter to the Commission stating that he was picking up department supplies and struck the vehicle with his cruiser while he was backing out of his parking spot. After being questioned further, Palmer withdrew his request for payment of the \$1,969.24 and paid the bill himself.

Palmer admitted that he violated the private gain provision in the Ethics Act, at W. Va. Code § 6B-2-5(b), by attempting to have the County Commission pay a damage claim that was personal in nature. Palmer agreed to pay a fine in the amount of \$5,000, to receive a public reprimand, and to undergo training on the Ethics Act.

VCRB 2019-76: Ronald Keith Anderson, Chief Deputy, Mineral County Sheriff's Office

In approximately February 2019, Anderson posted a picture of himself in his Deputy Sheriff's Office uniform on his "Keith Anderson for Mineral County Sheriff 2020" Facebook page. Around the time he posted the picture, Anderson called the Ethics Commission and spoke with an Ethics Commission attorney to ask whether he could post the picture of himself in uniform. The attorney told Anderson that the answer was unclear and emailed him some Advisory Opinions relating to campaign activities of sheriffs for general guidance.

In May 2019, the Ethics Commission issued an Advisory Opinion holding that a city police officer may not include pictures of himself in his police uniform in his campaign material because the police uniform conveys the endorsement of his police agency. Anderson states that he was unaware of the ruling in the Advisory Opinion until September 2019 when the County Clerk told him he should take down the pictures of himself in uniform on his Facebook campaign page. When the County Clerk told Anderson to take down the pictures, he immediately did so.

Anderson admitted that he violated the private gain provision in the Ethics Act by including pictures of himself in uniform on his Facebook campaign page. He agreed to cease and desist from including pictures of himself in uniform in his campaign material and to undergo training on the Ethics Act.

VCRB 2019-92: David Stratton, Chief of Police, Town of Matewan

Stratton is the Chief of Police for the Town of Matewan and was a candidate for Sheriff. Stratton had a personal Facebook page which he also used for his election campaign.

On October 29, 2019, Stratton posted a video of himself in his Matewan Chief of Police uniform on his personal Facebook page urging the voters of Mingo County to support him in the upcoming election. Upon receipt of the Complaint against Stratton, the Ethics Commission staff advised the Respondent that he should remove the video from his Facebook page, and he did so. Stratton states that when he posted the video of himself in his uniform, he was unaware of the Ethics Commission's May 2019 ruling in Advisory Opinion 2019-14.

Stratton admitted that he violated the private gain provision in the Ethics Act when he posted the video of himself in his law enforcement uniform on his Facebook page as part of his campaign. He agreed to cease and desist from including pictures of himself in uniform in his campaign material and to undergo training on the Ethics Act.

VCRB 2019-48: Louise Stoker, Mayor, Town of Bramwell

Louise Stoker is the Mayor of the Town of Bramwell. On March 27, 2014, Stoker hired her granddaughter as a part-time receptionist for the Town of Bramwell. The granddaughter's salary was \$8.00 per hour, and the Town did not provide her benefits. The only salary increases the granddaughter received after her hiring were for purposes of keeping her salary at the minimum wages required by law.

At the time Stoker hired her granddaughter, the Ethics Commission's Legislative Rule relating to nepotism, at W. Va. R. § 158-6-3 (1992), did not list grandchildren as relatives covered by the nepotism restrictions. Before hiring her granddaughter, Stoker reviewed the Legislative Rule in effect at that time and contacted Ethics Commission staff to verify that grandchildren were not covered by the Rule. The Town's elected officials (the Mayor, Recorder and Council members) were aware that the Mayor had hired her granddaughter as a Town employee and was supervising her.

The Ethics Commission's Legislative Rule was revised in 2017 to include more specific guidance on the nepotism restrictions. The changes to the Rule included, in relevant part, adding grandchildren to the list of covered relatives and prohibiting public officials and employees from directly supervising their relatives.

After Stoker received notice of the Complaint, she terminated her granddaughter's employment with the Town. Stoker states that, had she been aware of the changes to the Legislative Rule relating to nepotism, she would have taken steps sooner to ensure she was complying with the new requirements.

Stoker admitted that she violated the nepotism restrictions in the West Virginia Governmental Ethics Act, at W. Va. Code § 6B-2-5(b), and related Legislative Rule, W. Va. Code R. § 158-6-3 (2017), by supervising her granddaughter. The Commission ordered her to undergo Ethics Act training and found that her attendance at an Ethics Commission training session in July 2019 satisfied the training requirement.

VCRB 2019-78, 80, 82, 84, and 86: Hardwick Johnson, Council Member, Town of Harpers Ferry

On June 11, 2019, the town of Harpers Ferry held a municipal election. Johnson was a sitting council member and seeking reelection to one of the five at-large seats on the Harpers Ferry Town Council. Members of the Harpers Ferry Town Council receive \$2,000 annual compensation for their service.

The vote tallies for the five available seats were certified as follows: Barbara Humes, 91 votes; Jay Premack, 87 votes; Hardwick Johnson, 85 votes; Christian Pechuekonis, 84 votes; Charlotte Thompson, 84 votes; Nancy Singleton Case, 82 votes; Deborah McGee, 81 votes; Marjorie Flynn Yost, 81 votes; and Leah Howell, 15 votes. On July 8, 2019, two candidates filed a notice of election contest ultimately alleging that four provisional ballots should have been counted.

Given the vote tallies as represented in the certified election results, the issue of whether to count the four provisional ballots could have resulted in Johnson losing his seat. Relying upon the advice of counsel, Johnson participated in adjudicating the election contest maintaining that the rule of necessity required him to participate as a member of the Tribunal. Belying the rule of necessity argument, however, is the fact there was a quorum of four persons who were not impacted by the election contest available to serve on the Tribunal, namely, the mayor, the recorder, council member Humes and council member Premack.

Johnson admitted that he violated the voting provision in the Ethics Act, at W. Va. Code § 6B-2-5(j)(1), when he, relying upon the advice of counsel, participated and voted in the election contest trial as a member of the Harpers Ferry Election Contest Tribunal. Johnson agreed to pay a fine in the amount of \$750, to receive a public reprimand and to undergo training on the Ethics Act.

VCRB 2019-79, 81, 83, 85, and 87: Charlotte Thompson, Council Member, Town of Harpers Ferry

On June 11, 2019, the town of Harpers Ferry held a municipal election. Thompson was a sitting council member and seeking reelection to one of the five at-large seats on the Harpers Ferry Town Council. Members of the Harpers Ferry Town Council receive \$2,000 annual compensation for their service.

The vote tallies for the five available seats were certified as follows: Barbara Humes, 91 votes; Jay Premack, 87 votes; Hardwick Johnson, 85 votes; Christian Pechuekonis, 84 votes; Charlotte Thompson, 84 votes; Nancy Singleton Case, 82 votes; Deborah McGee, 81 votes; Marjorie Flynn Yost, 81 votes; and Leah Howell, 15 votes. On July 8, 2019, two candidates filed a notice of election contest ultimately alleging that four provisional ballots should have been counted.

Given the vote tallies as represented in the certified election results, the issue of whether to count the four provisional ballots could have resulted in Thompson losing her seat. Relying upon the advice of counsel, Thompson participated in adjudicating the election contest maintaining that the rule of necessity required her to participate as a member of the Tribunal. Belying the rule of necessity argument, however, is the fact there was a quorum of four persons who were not impacted by the election contest available to serve on the Tribunal, namely, the mayor, the recorder, council member Humes and council member Premack.

Thompson admitted that she violated the voting provision in the Ethics Act, at W. Va. Code § 6B-2-5(j)(1), when she, relying upon the advice of counsel, participated, and voted in the election contest trial as a member of the Harpers Ferry Election Contest Tribunal. Thompson agreed to pay a fine in the amount of \$750, to receive a public reprimand and to undergo training on the Ethics Act.

VCRB 2020-12: Don DeWitt, Chief of Police, City of McMechen

DeWitt is the Chief of Police for the City of McMechen and was a candidate for the office of Marshall County Magistrate.

On January 21, 2020, DeWitt posted a campaign video of himself on his campaign Facebook page. The video shows DeWitt sitting in his City of McMechen cruiser and wearing his City of McMechen law enforcement uniform while he discusses his background and qualifications for the position. DeWitt filmed the video, which was only several minutes long, while on duty using his personal cellular phone.

DeWitt states that when he posted the video of himself in his uniform, he was unaware of the Ethics Commission's May 2019 ruling in Advisory Opinion 2019-14. DeWitt admitted that he violated the private gain provision in the Ethics Act when he posted the video of himself in his law enforcement uniform on his Facebook page as part of his campaign. He agreed to 1) cease and desist from including pictures of himself in uniform in his campaign material, 2) cease and desist from using his police cruiser and City work time for campaign activities, and 3) undergo training on the Ethics Act.

VCRB 2020-13: Debra Hagedorn, Board member, Deckers Creek Public Service District

Debra Hagedorn has served as an appointed member of the Deckers Creek Public Service District ("PSD") Board, which is comprised of three members, for approximately 25 years.

Hagedorn's daughter, Beth Hagedorn Bosley, began working for the PSD on a temporary, intermittent basis in 2005 and became its Office Manager in January 2018. Hagedorn was not involved in the PSD's decisions to hire her daughter or to promote her.

The PSD voted in 2016, 2017, 2018, and 2019 to give merit bonuses, which varied in amounts, to its employees. All PSD employees, including Hagedorn's daughters, received bonuses. At no point was Hagedorn the deciding vote in the PSD Board's decision to give the bonuses to its employees.

On January 7, 2020, the PSD Board members, including Hagedorn, met with a PSD employee and Hagedorn's daughter to listen to the employee express her concerns about her working conditions and Hagedorn's daughter. Hagedorn participated in the meetings with the employee and her daughter at the request of the other PSD Board members who requested that she be present to hear both sides of the story.

No action was taken by the Board at the meeting or thereafter. Shortly after the January meeting, the PSD employee quit her employment with the PSD and complained, in part, that Hagedorn should not have been present when the other PSD

Board members met with her (the employee) and Hagedorn's daughter about the employee's concerns.

Hagedorn admitted that she violated the nepotism restrictions in the Ethics Commission's Legislative Rule, at W. Va. Code R. § 158-6-3.5 (2017), and the voting provisions in the Ethics Act, at W. Va. Code § 6B-2-5(j), when she participated in and voted on the PSD's decision to give the PSD employees, including her daughter, year-end bonuses. She further acknowledged that she should have contacted the Ethics Commission for advice prior to participating in the January 7, 2020, PSD meeting at which the PSD met with a PSD employee and her daughter.

Hagedorn agreed to undergo training on the West Virginia Governmental Ethics Act, pay a fine in the amount of \$500, and to cease and desist from being involved in matters affecting the employment and working conditions of her daughter unless the daughter is affected as a member of a class consisting of not fewer than five similarly situated persons.

VCRB 2020-16: Greg Vandetta, Former Mayor, Town of Monongah

Greg Vandetta previously served as the elected Mayor of the Town of Monongah. On December 12, 2018, employees of the Town, while repairing a water line, damaged an electrical line that ran to a light pole owned by Holy Spirit Church ("Church"). Vandetta was a member of the Church.

The Church's facilities manager approached the Town regarding repairing the damage. The Town's maintenance supervisor received an estimate, dated May 3, 2019, from a business in the amount of \$2,435 to repair the damage to the electrical line.

The bid stated, in relevant part, that it included "digging to the road but not through the road" and that "if blacktop needs to be trenched, there will need to be a Change Order."

On June 11, 2019, Vandetta met with the facilities manager at the Church to discuss the bid estimate. Vandetta and the facility manager agreed that there was a cheaper way for the job to be done using a trench that had already been dug up at the Church in the blacktop for an unrelated project. Vandetta made a hand-written notation at the bottom of the bid which reads, "6.11.2019 I MET WITH JOHN AND WE FOUND A WAY TO HAVE THIS REPAIRED AT ½ THE COST OF THIS ESTIMATE. I TOLD HIM TO GET IT REPAIRED & BILL THE TOWN."

The Town began the repair project by installing approximately 30 feet of conduit under the trenched blacktop. The facility manager asked if Vandetta knew of anyone who could complete the work which included ditching, laying additional conduit, and running electrical wire. Vandetta had discussions with an employee at a local sales and supply company, and the employee declined the work.

On June 11, 2019, the Town of Monongah held a municipal election. Vandetta was the sitting mayor and failed in his re-election bid. Vandetta's term as mayor ended on July 1, 2019.

After his term of office ended, Vandetta had another discussion with the Church's facility manager regarding whether Vandetta had found someone to finish the repairs at the Church. Vandetta approached the employee at the local sales and supply company again, but the employee still declined the work.

Vandetta then decided he could finish the repairs at the Church since he was no longer the mayor of Monongah. Vandetta was a licensed electrician and had performed maintenance projects for the Church in the past.

Vandetta completed the work and submitted an invoice, dated August 27, 2019, which totaled \$1,750.98 and was to be paid by the Town. Labor costs represented \$1,170 of the total amount and included hours worked by both Vandetta and Vandetta's grandson. The remaining \$590.98 was for materials.

The West Virginia Ethics Act prohibits a public official or business with which the official is associated from having 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(d)(1). While mayor of the Town, Vandetta exercised authority and control over the Town's agreement to cover the costs associated with repairing the electrical line damage at the Church.

Vandetta admitted that he violated the public contract provision in the West Virginia Governmental Ethics Act, at W. Va. Code § 6B-2-5(d)(1), when he billed the Town for services that he unilaterally approved when serving as Mayor of the Town. Vandetta agreed to cease and desist from submitting any further invoices to the Town for the work associated with repairing the light at the Church other than costs for materials totaling \$590.98; to not accept, directly or indirectly, any public monies for the work associated with repairing the light at the Church other than costs for materials totaling \$590.98, and to undergo training on the Ethics Act.

Lobbyists

The Ethics Commission conducts the registration of lobbyists in West Virginia. It also processes and enforces lobbyists' reporting of their lobbying activities and expenditures. The Commission also retains a Certified Public Accountant to conduct annual audits of randomly selected lobbyists' activity reports.

Lobbyist registrations by calendar year:

2020 – 131
2019 – 220
2018 – 204

2017 – 251
2016 – 173
2015 – 409

Lobbyist spending by calendar year:

2020 – \$713,783.11
2019 – \$498,382.31
2018 – \$455,617.23
2017 – \$452,918.43
2016 – \$525,846.50
2015 – \$523,642.66

Financial Disclosure Statements

The Ethics Act requires certain public officials and candidates to file Financial Disclosure Statements with the Commission. All Disclosures are available for public inspection and copying. Disclosures filed by members of the Legislature, elected members of the executive department, justices on the Supreme Court of Appeals and candidates for these positions are placed on the Commission’s website.

Following are the numbers of Disclosures processed during the prior five calendar years:

2020 – 3,285
2019 – 3,017
2018 – 3,903
2017 – 2,880
2016 – 3,512

Training – Public Servants and Lobbyists

The Ethics Commission staff provides training on the Ethics Act and the Open Governmental Meetings Act to lobbyists and to large groups of public officials and employees. In addition to “live” training sessions, the Commission provides videos of training on the Ethics Act, the Open Governmental Meetings Act, and lobbyist provisions on its website.

The Commission trained 999 public officials and employees and lobbyists in 2020.

Report issued January 25, 2021