

WEST VIRGINIA ETHICS COMMISSION 2009 FACTS AND FIGURES



"Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people."
Henry Clay 1829

HISTORY

The West Virginia Ethics Commission was established in July 1989 to administer the West Virginia Governmental Ethics Act, which was passed in a Special Session of the West Virginia Legislature in January 1989. The Commission is an independent, bi-partisan board consisting of twelve citizen members, appointed by the Governor, and confirmed by the West Virginia State Senate. Commissioners serve staggered five-year terms. The Commission holds monthly meetings that are open to the public. The date, time, place and agenda of each meeting are made available on the Commission's Web site, www.wvethicscommission.org.

The Ethics Commission administers the Ethics Act by educating public servants covered by the Act, providing information to the public, interpreting and applying the provisions in the Act, and enforcing the requirements of the Act through an investigation and complaint process.

PUBLIC SERVANTS SUBJECT TO THE ACT

The code of conduct established by the Ethics Act applies to **all** public servants including public employees, elected public officials, and appointed public officials, whether full-time or part-time, in the legislative, judicial, and executive branches of state, county and municipal government, including all boards, commissions and agencies.

ADVISORY OPINIONS

In response to written requests from affected persons inquiring about their own conduct, the Ethics Commission issues advisory opinions relating to the application of the standards of conduct in the Ethics Act including conflicts of interest, financial disclosure and lobbying. A person subject to the Act may request an opinion regarding a proposed future course of action. An opinion issued by the Commission provides the employee or official, and any other similarly situated public servant who relies on an opinion in good faith, immunity from the sanctions in the Act, as well as an absolute defense to criminal prosecution under the Act. Precedential Advisory Opinions rendered by the Commission from 2005 to the present are available on the Commission's web site.

Since 1989, the Commission has issued hundreds of written advisory opinions interpreting and applying the Ethics Act. These precedents allow the Commission's staff to handle most inquiries over the telephone. Persons seeking guidance on complying with the Act may also submit inquiries via fax, E-mail or regular mail. Questions will only be submitted to the Commission for a formal advisory opinion where there is no precedent covering the inquiry, or the requester expressly indicates that he or she wishes the question to be addressed by the full Commission.

OPEN MEETINGS

In addition to administering the Ethics Act, the Commission's staff answers questions from governing bodies and their members and the Commission provides advisory opinions on the meaning and application of the Open Meetings Act or "Sunshine Law" through its Committee on Open Governmental Meetings. The 1999 revisions to the Act created the "West Virginia Ethics Commission Committee on Open Governmental Meetings" as a three-member sub-committee of the Ethics Commission charged with interpreting the requirements of the Act in specific circumstances. A governing body or governing body member may request an advisory opinion regarding the application of the Act to their organization from this committee.

ADMINISTRATIVE LAW JUDGE CODE OF CONDUCT

The WV Ethics Commission's Committee on Standards of Conduct for Administrative Law Judges answers questions from ALJs and provides advisory opinions to them relating to the Rules on Standards of Conduct. It also enforces the Code through an administrative procedure for adjudicating complaints filed against ALJs. In 1999, the West Virginia Supreme Court of Appeals asked the State Bar to consider adopting a Code of Conduct for administrative law judges. Thereafter, the Bar's Administrative Law Committee studied the issue. In 2004, the State Legislature amended the West Virginia Governmental Ethics Act, directing the State Ethics Commission, in consultation with the West Virginia State Bar, to draft a Code of Conduct for State Administrative Law Judges. As directed, a Code of Conduct was drafted, using the Model Codes of Judicial Conduct for State Administrative Law Judges developed by the National Association of Administrative Law Judges and the American Bar Association as guides. Following the required public comment period, the proposed Code was submitted for review by the Legislature's Legislative Rule Making Review Committee and approved by the Legislature during the 2005 regular session. The Code became effective on July 1, 2005.

LOBBYISTS

The Ethics Commission also administers the registration and reporting requirements for lobbyists as well as collecting financial disclosure reports which certain public servants are required to file annually.

SCHOOL BOARD MEMBERS

Finally, the Ethics Commission is authorized to issue written advisory opinions to county board of education members, members-elect and candidates for election to the board whether they may hold certain other positions and serve on a county board in accordance with the provisions of W. Va. Code § 18-5-1a.

ETHICS ACT

A BRIEF HISTORY OF SIGNIFICANT CHANGES

1989 Special Legislative Session– General standards of conduct created. The Ethics Commission is charged with interpreting and enforcing the Act.

2005 Special Legislative Session – Significant Changes

- **Authority to initiate Complaints** - if the Commission receives credible evidence which leads it to believe that a violation of the Act has occurred, upon a majority affirmative vote of its members it may order the Executive Director to file a complaint. W.Va. Code § 6B-2-3(a).
- **Statute of limitations** – expanded from 1 year to 2 years.
- **Probable Cause Review Board** – This Board is created. It consists of three members appointed by the Governor with the advice and consent of the Senate. The Board reviews Complaints to make a threshold determination of whether probable cause exists to believe that a violation of the Ethics Act has occurred. W.Va. Code § 6B-2-2a.
- **Stay before election** - No complaint may be accepted or initiated against a public official for 60 days before a primary or general election. The statute of limitations is tolled during this period. W.Va. Code § 6B-2-3a(c).
- **Bad Faith Complaints** - Provides that if the Commission finds by clear and convincing evidence that a person did not file a complaint in good faith, or provided information knowing it was not true or requested an investigation in reckless disregard of the truth or falsity, then they are subject to sanctions. The sanctions are: (1) Order the complainant to reimburse the respondent for reasonable costs and attorney fees; (2) Order the complainant to reimburse the Commission for costs; and, (3) the Commission may decline to process further complaints. W.Va. Code §6B-2-4(u).
- **Sanctions** – Monetary sanction increased from \$1,000.00 to \$5,000.00 per violation. The Commission may recover its actual costs of investigating and prosecuting a violation.
- **False information** - States that any person who knowingly gives false information to the Commission, or procures another person to give false information, is subject to sanctions. W.Va. Code § 6B-2-10(f.)
- **Lobbyist** – Requires first dollar reporting. Also requires that: (1) lobbyists undergo training; and, (2) random audits be conducted of lobbyists' expenditure reports.
- **Training of Public Officials** – Requires newly elected Members of the Legislature, Board of Public Works and certain individuals in the Executive Branch of Government, as designated by Executive Order, to undergo Ethics Training.

2008 LEGISLATIVE SESSION

- **Limitations on public servants who exercise control over vendors** - Expands the prohibition against being employed by a regulated business to include employment by vendors or contractors over which the public servant exercises authority or control. The requisite level of control includes drafting bid specifications, being involved in the selection process, conducting inspections, approving the method of payment, providing legal or technical guidance or taking other discretionary action which may affect the financial interests of the vendors. Persons who exercise the requisite level of control may seek employment with a vendor once they request and receive an employment exemption from the Ethics Commission. These exemptions will be granted in accordance with the Commission's present practice which is already set forth in the Code.
- **Voting** - Establishes within the Ethics Act rules on voting by elected and appointed state, county and municipal officials. The rules on voting are currently incorporated in a Legislative Rule. § 6B-2-5(j). The new rules are:
 - Public Officials **may not** vote on a matter in which they have a financial interest.
 - Public Officials **may not** vote on a matter which involves a business in which they have a financial interest or a business with which they are associated. A business with which they are associated means a business in which they are a: (1) director; (2) officer; (3) owner; (4) employee; (5) compensated agent; or (6) holder of 5% or more of outstanding stocks of any class.
 - Public Officials **may not** vote on a matter which involves a business in which an immediate family member is associated. The meaning of the term associated is outlined above. An immediate family member is defined as spouse, dependent children, dependent grandchildren or dependent parents.
 - Public officials who are employed by a financial institute **may not** vote on a matter if: (1) their primary responsibilities include consumer and commercial lending; (2) a matter is before their governing body which involves a customer; (3) they have been involved in approving a loan request for the customer in the past 12 months or are currently involved in approving such a request; and, (4) the loan request in question exceeds \$15,000.00.
 - Public officials **may not** vote on a personnel matter involving their relatives. Relatives are defined as spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law.
 - Public officials **may not** vote on appropriating monies or awarding a contract to a nonprofit corporation if the public official or an immediate family member is employed by the nonprofit.

- Public officials may vote on any matters where they or a family member are a member of a class of 5 or more persons.
- Public officials may vote on a matter involving a publicly traded company if they or a dependent family member own: (1) less than 5% of the stock in the company, and (2) the value of the stock is less than \$10,000.00.
- Codifies existing rule on proper recusal. For a recusal to be effective, public officials must: (1) disclose their interest; and, (2) physically remove themselves from the room.
- Members of Legislature are still governed by the rules of each House.

GENERAL FACTS AND FIGURES

Public Official and Employees Ethics and OMA Training – A Snapshot

YEAR	TOTAL*
2005	2588
2006	1212
2007	1833
2008	1844
TOTAL	7477

* Figures based upon good faith estimate of attendees.

REGISTERED LOBBYISTS

Lobbyist registrations expire at the end of each even numbered year. They must re-register in order to continue to lobby. Reports are filed by lobbyists three times per year. Reports are due May 15, September 15, and January 15 of each year with each report covering the prior four months.

REGISTRATION YEAR	NUMBER OF LOBBYISTS REGISTERED	TOTAL AMOUNT OF SPENDING REPORTED BY LOBBYISTS
2005	445	\$246,137.00
2006	458	\$329,847.00
2007	416	\$360,319.00
2008	463	\$376,941.00
2009 to date	260	

LOBBYIST TRAINING

Lobbyists are required to be trained once during each registration cycle. 581 Individuals have been trained either in person or by DVD.

LOBBYIST AUDITS

A total of 80 lobbyists have completed their audits. Thirty more are in the audit process resulting in a total of 110 lobbyists who have completed their audits or are in the process of being audited. All lobbyists were cooperative and no adverse findings were made, although amendments or corrections to filed reports were submitted by some lobbyists as a result of the audit. The look back period is two years for lobbyists to maintain their records. Lobbyists may not be audited more than once in 24 months.

AUDIT DATE	LOBBYISTS AUDITED
August 2006	20 complete
May 2007	30 complete
May 2008	30 complete
October 2008	30 in process

FINANCIAL DISCLOSURE FORMS

Financial Disclosure forms are filed annually by state elected officials, county elected officials, members of boards, agencies and commissions who have been appointed by the governor, school board members and certain higher level state employees. During election years candidates must also file.

2006 - 2431 disclosure forms were filed in 2006 plus approximately 1400 candidate forms

2007 - 2424 disclosure forms were filed

2008 - 2701 annual disclosures were filed plus approximately 1800 candidate forms.

2009 – 3149 forms were mailed out (The increase is due to more state employees filing and also a new requirement that conservation board members must file disclosure forms.)

ETHICS COMPLAINT STATISTICS

YEAR	Total Number of Complaints
2005	45
2006	40
2007	23
2008	29
2009 to date	2

CONCILIATION AGREEMENTS

YEAR	TOTAL
2005	2
2006	2
2007	7
2008	5

ALJ COMPLAINTS

YEAR	TOTAL
2008	3

ETHICS ADVISORY OPINIONS

YEAR	TOTAL
2005	23
2006	18
2007	15
2008	10

CONTRACT EXEMPTIONS

YEAR	TOTAL
2007	5
2008	13

EMPLOYMENT EXEMPTIONS

YEAR	TOTAL
2005	12
2006	13
2007	17
2008	25

OPEN GOVERNMENT ADVISORY OPINIONS

YEAR	TOTAL
2005	13
2006	15
2007	12
2008	18

SCHOOL BOARD ADVISORY OPINIONS

YEAR	TOTAL
2005	2
2006	2
2008	2

ADVICE PHONE CALLS

YEAR	TOTAL *
2006 thru 2007	2175
2008	1249

* Figures based upon good faith estimate.

RESPONSES FOR ADVICE

YEAR	E-MAILS *	LETTERS *
June 2006 thru January 2009	535	280

* Figures based upon good faith estimate.