

WEST VIRGINIA ETHICS COMMISSION 2012 ANNUAL REPORT



WEST VIRGINIA ETHICS COMMISSION

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WEST VIRGINIA ETHICS COMMISSION 2012 ANNUAL REPORT

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). The Commission meets on the first Thursday of each month to consider advisory opinion requests, requests for exemptions and adjudicatory matters.

Chairperson
R. Kemp Morton, III
Huntington, WV

Jonathan E. Turak
Wheeling, WV

Vice-Chairperson
Drema S. Radford
Beckley, WV

Terry Walker
Kearneysville, WV

Jack Buckalew
Charleston, WV

Monte Williams
Morgantown, WV

Ronald G. Salmons
West Hamlin, WV

Robert Wolfe
Man, WV

Father Douglas B. Sutton
Mannington, WV

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. W.Va. Code § 6B-2-2a. The Members oversee the investigation of verified complaints and determine whether a complaint should be dismissed or whether probable cause exists to believe that a violation of the Ethics Act may have occurred. The Members of the Review Board meet once a month.

Chairperson, James E. Shepherd, II
Huntington, WV

Daniel J. Guida
Weirton, WV

Michael A. Kawash
Charleston, WV

STAFF

Theresa M. Kirk
Executive Director

Lucy A. Suchy
Lobbyist Registrar

C. Joan Parker
General Counsel

David O. Lucas
Investigator

Martin J. Wright
Deputy Counsel

Lietta J. White
Paralegal

Kimberly B. Weber
Staff Attorney

BUDGET

Fiscal Year 2012 \$755,305.00

Fiscal Year 2013 \$755,507.00

DUTIES OF THE COMMISSION

The Ethics Commission administers the Ethics Act, in accordance with the provisions of W. Va. Code § 6B-1-1 et seq., 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 investigative and complaint process.

In addition to administering the Ethics Act, the Commission provides advisory opinions to governing bodies and their members and answers questions from them on the meaning and application of W.Va. Code § 61-10-15, a criminal misdemeanor statute.

Further, the Commission's Committee on Open Governmental Meetings provides advisory opinions to governing bodies and their members and answers questions from them on the meaning and application of the Open Meetings Act or "Sunshine Law", according to W.Va. Code § 6-9A-1 et seq. The Committee consists of Chairperson, Drema Radford, Commissioner Jack Buckalew, Commissioner Ronald Salmons and alternate, Commissioner Kemp Morton.

Further, 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. This Committee consists of Chairperson Jonathan Turak, Commissioner Kemp Morton, Commissioner Ronald Salmons and Alternate, Commissioner Monte Williams.

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.

Finally, the Ethics Commission provides advisory opinions to county board of education members, members-elect and candidates for election to boards and answers questions to them on whether they may hold certain other positions while serving on a county board of education, in accordance with the provisions of W. Va. Code § 18-5-1a.

ADVICE

Public servants may seek informal advice from the Ethics Commission staff orally or in writing. If Commission staff is unable to answer the question based upon the plain language in the Ethics Act, or existing precedent, then a public servant may seek a formal advisory opinion. The Commission meets once a month to consider advisory opinion requests.

The following is an overview of the number of requests for advice received by the Commission for the past 3 years.

STAFF ADVICE

YEAR	Telephone*	Correspondence, including emails
2010	1889**	340
2011	1598	453
2012	2093	408

*Good faith estimates

**Fiscal year 2010

FORMAL ADVISORY OPINIONS

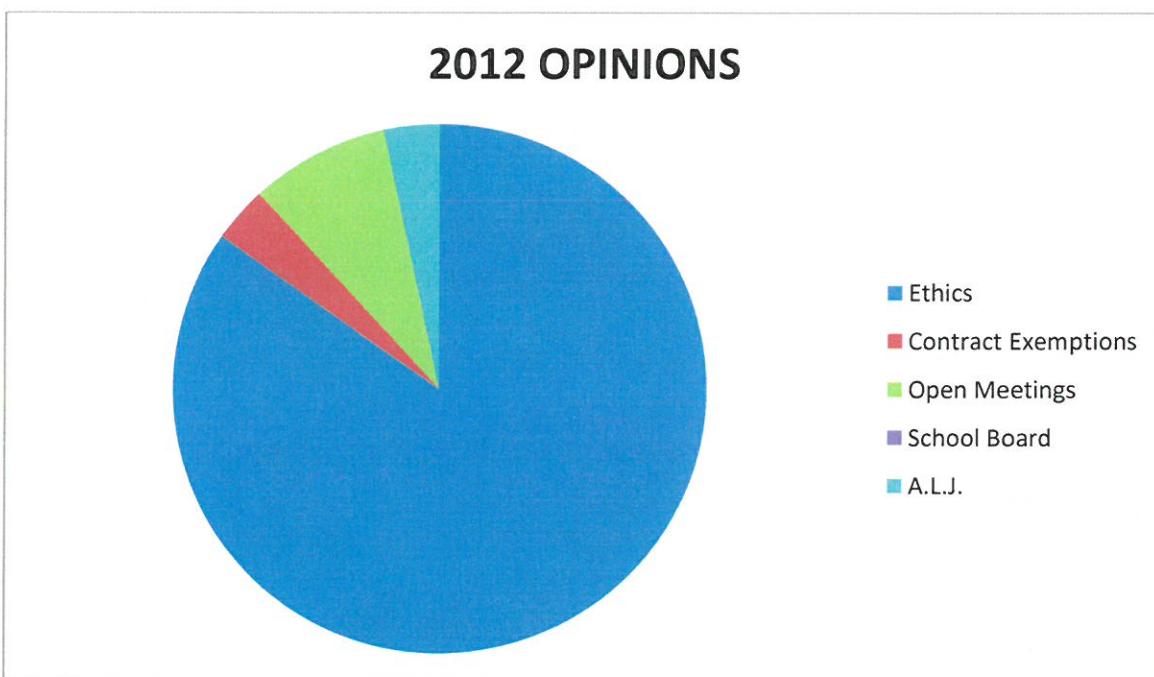
Subject Matter	2010	2011	2012
Ethics	23	22	50
Open Meetings	3	7	5
A.L.J. Code of Conduct	2	1	2
Contract Exemptions	7	5	6
Employment Exemptions	19	22	24

Property Exemptions	1	0	1
TOTAL:	55	57	87

Training - Public Servants and Lobbyists

YEAR	Number Trained
2010	1660
2011	2047
2012	2457

The following is an overview of Advisory Opinions issued by the Commission in 2012.



2012-01 Mayor - Ethics Act does not prohibit city employed building inspector from serving on City Council, but he must perform his Council duties on his own time, not during his public work hours. The affected employee may not vote on a personnel matter which affects him directly as opposed to affecting five or more employees in the same or similar manner. City employed building inspector serving on City Council must recuse himself when citizens who are affected by his official actions come before City Council to address or dispute his official actions.

2012-02 County Commissioner - Ethics Act does not prohibit County from purchasing property from real estate business with which a County Commissioner is associated, with limitations: Commissioner may not use his position to influence purchase of the property. Commissioner and immediate family members may not have a prohibited

financial interest in property sought to be purchased by County Commission. Commissioner may not be a director or officer of the real estate business; the listing agent for the property; or, entitled to receive any commission from the sale of the property.

2012-03 County Agency - Ethics Act does not prohibit County Agency from employing Supervisor's son, even though they live in the same house, so long as the Supervisor is completely removed from the hiring process. Supervisor employed by County Agency is not a county officer and therefore is not subject to provisions of W. Va. Code § 61-10-15. General rule: Public servant should not supervise a relative.

2012-04 Attorney for Municipal Water Board - General Rule: Ethics Act does not prohibit Chairperson of Municipal Water Board from being employed by Board after resigning as Chairperson. When a public body knows in advance that one of its preferred candidates is a relative, close friend, or fellow member of the public body, public body must follow the Commission's nepotism guidelines. Job description so narrowly tailored that only Board's Chairperson qualifies fails to satisfy requirements of nepotism guidelines.

2012-05 Public Employee - Although public employee teacher has personal financial interest in public employment with BOE, the interest does not create prohibition against public employer contracting with agency on which employee serves as public official - here - as a County Commissioner. Employment by public agency constitutes personal financial interest which prohibits employee who serves as public official from voting on matters that affect public employer. Matters affecting the BOE uniquely affect public official's employer, not a class of five or more similarly situated County BOEs.

2012-06 Elected Member of the Board of Public Works - Public official may not endorse business or product of the sponsor of an international government forum that is paying travel expenses related to forum. Must notify forum participants that the West Virginia Ethics Act prohibits him from endorsing a particular product and that presentation relating to fraud control should not be construed as endorsement of the sponsor's particular business or product.

2012-07 Mayor - May not use public resources for the benefit of his private business; may not use subordinate staff to perform work associated with his private business while the subordinates are on the government time clock; may not solicit private business from subordinates; may not distribute promotional materials concerning his private business from his office and/or in City/Town Hall; may not have an interest in a public contract, with certain exceptions; must recuse himself when a current customer appears before Council. When serving as municipal judge, must: if customer within past six months appears, disclose the fact thereof and recuse himself if either party requests; and recuse himself from cases involving customers within the past six months.

2012-08 Municipal Police Department - Ethics Act prohibits the solicitation of donations to purchase a police canine and gun racks for police cars. Ethics Act permits Department to accept the unsolicited contribution of funds to purchase a police canine and gun racks for police cars.

2012-09 State Employee - Not a public official subject to revolving door prohibitions in Ethics Act. May communicate with former agency on general matters. Must seek advice from Commission before representing private interests regarding matters in which he was substantially involved.

2012-10 – withdrawn

2012-11 County Commissioner - W. Va. Code § 61-10-15 prohibits living with county employee even if nepotism rules followed and/or even if employee transferred to another county office.

2012-12 Local Board of Health - Board of Health's part-time appointed Health Officer may accept patient referrals from the Health Department so long as s/he does not make, participate in making, or in any way attempt to use his or her office or employment to influence a government decision affecting his or her financial or limited financial interest. Local Board of Health formed by a county and a municipality not subject to strict provisions of W. Va. Code § 61-10-15. County Boards of Health are subject to strict provisions of W. Va. Code § 61-10-15; their health officers (part-time and full-time) may not contract with own Board of Health unless Board seeks and receives advice or a contract exemption from Ethics Commission.

2012-13 Member of a County Board of Education (BOE) - May contract with a public university to supervise university students during their placement in public schools in the county where he serves so long as he does not use any public resources, including BOE staff, to perform his private contractual duties.

2012-14 withdrawn

2012-15 Sheriff - May use his public title to endorse Chief Deputy or other candidate for public office, including through newspaper advertisements or radio announcements. May not spend public funds for these purposes.

2012-16 County Commission - Prohibited from purchasing private property from appointed member of County Building Commission. May seek Contract Exemption if it believes the property is only viable option.

2012-17 Presiding Officer of a house of West Virginia Legislature - May not be retained to provide legal services to an Association which is actively engaged in lobbying Legislature on behalf of its members who are public employees. Proposed employment contract presents an inescapable conflict, given the unique position held and power wielded by the presiding officer. Access to confidential

information may have chilling effect on other legislators, if proposed employment contract permitted. Public may perceive that Association has hired him because of his unique ability to influence legislation. Other Associations that do not employ a high ranking member of the Legislature may believe that they are at a disadvantage in the legislative process. Opinion limited to Presiding Officers of houses of West Virginia Legislature.

2012-18 Registered Lobbyist - Not required registering as lobbyist on behalf of client who retained her to provide advice on State procurement process and to serve as a liaison to a State Agency during client's efforts to successfully bid on State contract. Statutory definition of "lobbying" excludes procurement lobbying.

2012-19 Member of the Legislature - May be retained to provide consulting services to Public University during and after his term of office. Conflict of interest cured by his removal from potentially overlapping committees. May not use influence of legislative position to attempt to affect the actions of University personnel to enhance his contractual benefits; introduce, sponsor or advocate legislation to benefit the University in any way; influence either the State's distribution of federal grant money or State funds to the University for any purpose, not just those related to his consulting contract; or influence the appropriation of public funds to benefit the University in any way.

2012-20 Public University - May use public funds to purchase prizes or incentives, including gift cards, for wellness related competitions or promotions when prize recipients include University employees. \$25.00 gift limit not applicable because wellness program administrators are not interested parties to recipients.

2012-21 Local Health Department - Any person or public entity subject to the Ethics Act may seek advisory opinion about their own prospective conduct. Public servant members of non-profit entity that oversees and distributes federal grants to their employers must recuse themselves from considering, evaluating, discussing, ranking, and/or overseeing funding decisions, including the funding matrix. May be permissible for non-profit organization to handle funding allocation matters if certain conditions, as outlined in opinion, are met.

2012-22 Ambulance Authority - May not use public funds or staff to promote passage of levy when levy proceeds will be used for its employees' salaries. Executive Director or Board Members, or both, may publicly speak in favor of levy. May use public funds to educate public about levy process, nature of services provided by agency, and purpose for which levy funds will be used. May, in advertisements paid for with public funds, encourage public to vote on issue, but may not advocate for passage of levy.

2012-23 Member of the Legislature - May serve as Recorder for municipality; limitations apply; May not use legislative position to influence appropriation of monies to municipality; Must perform statutorily mandated recorder duties while serving in the legislature in order to lawfully receive compensation; Commission has no jurisdiction to

rule whether member's service as recorder is constitutional or the applicability of the common law doctrine of incompatibility.

2012-24 Mayor - May reside with father who is employed by City. May not exercise supervisory control over his father/city employee. May participate in collective bargaining agreement negotiations with union of City employees of which father is a member. Must recuse himself from the negotiation of any provision in collective bargaining agreement which uniquely affects his father, but may vote on the collective bargaining agreement in its entirety.

2012-25 State Employee - May represent clients before his former agency upon his departure from government without waiting one year. Not an "appointed public official" so one year limitation does not apply because: (1) position not created by law; (2) no oath of office; and, (3) neither full-time staff attorney nor accountant. May not represent clients in matters in which he was substantially involved; May not use or reveal confidential information; May register as lobbyist upon his departure from government without waiting one year since he is not under direct supervision of Member of Executive Department.

2012-26 Candidate for County Commission - Spouse may not remain employed with County Clerk's office or by any other county office or agency if her husband becomes a county commissioner. Spousal exemption created by § 61-10-15 (I): (1) does not extend to persons elected to office whose spouses are already employed by County government or County school system; and, (2) only extends to certain spouses who were employed by county prior to their marriage to a county official.

2012-27 State Licensing Board - May provide working meal to members and any staff required to be present at Board meeting as part of their job duties. May spend reasonable amount of public funds for meals at meetings when meeting takes place at a time or is of such length that it makes the same reasonable. May not recess or adjourn meeting to go to an off-site location to consume a meal paid for with public funds. A meeting should not be scheduled at private locations unless those locations are in a public area fully accessible to the public at no cost. Must base decision to purchase meal upon a legitimate government reason. Should check with Auditor's Office to ensure expenditures does not run afoul of laws or regulations governing authorized expenditures. Does not apply to local governments.

2012-28 Candidate for Prosecuting Attorney - If Requester is elected Prosecuting Attorney, his spouse may not continue her employment with the Prosecuting Attorney's office. Requester's spouse may be employed by another county office or agency so long as she is chosen for such a position based on her experience and qualifications, not based on favoritism to the Requester.

2012-29 County Emergency Services Director - May not be compensated for performing duties of managing federal grant when those duties are the usual and customary duties associated with County Emergency Services Director. May not

privately contract with County to manage a federal grant given to County for mitigation projects, when Requester's duties as County Emergency Services Director gives him direct authority and control over private contract with County.

2012-30 County Emergency Services Director - May privately contract with Municipality within County to manage federal grant for mitigation projects when Municipality does not fall under County's floodplain jurisdiction. Does not have direct authority voice, influence, or control over Municipality's decision relating to grant money, and the expenditure thereof. Must notify County Commission of contractual arrangement with Municipality; to obtain approval; and abide by any restrictions that County Commission imposes.

2012-31 Elected Circuit Clerk - May not recommend or allow letter of support for a product, service or business of an interested person absent an overriding public benefit. May be listed on vendor's promotional materials solely as a previous customer. Any language that tends to refer to public servant or entity as a "satisfied customer" or otherwise serves to promote or endorse vendor expressly prohibited. May not appear in advertisement for a product, service, or business absent an overriding public benefit.

2012-32 State Legislator and County BOE Bus Operator - May contract with Regional Educational Service Agency (RESA) provided he: Does not use his public position to obtain unfair advantage in securing contract; Does not use his public position to gain unfair advantage for the RESA by which he is employed; and does not get paid during Legislative Session if he does not perform his contractual duties. May contract with RESA as Bus Operator exercises no control over contract. May be required to file verified time records with Ethics Commission if RESA duties performed during regularly scheduled BOE work hours.

2012-33 Public University Vice-President - May serve as member of Board of Directors of non-profit organization, so long as he is able to perform his public duties for which he is compensated. Service on Board of Directors of non-profit organization constitutes performance of usual and customary duties associated with position or advancement of public policy.

2012-34 Public Agency - May permit employee who was involuntarily denied boarding from a flight while in travel status to accept compensation from airline.

2012-35 – Withdrawn

2012-36 State Employee - May contract with State of West Virginia to compile official papers of former Governor. Does not have control over contract. Does not have access to confidential information related to contract award. May not use public resources, including Requester's own time and subordinate staff, to perform the duties of the contract.

2012-37 Mayor - \$100/year compensation for serving on City Council *de minimis*. Appointment to position on Council not a public contract. May vote for candidate to fill vacancy on Council who is a customer of her husband.

AO 2012-38 Appointed Member of a Municipal Historical Preservation Review Commission - When owners of distressed properties appear before the Review Commission, the Commission may provide them a referral list containing names of companies and individuals who may be interested in purchasing historical properties.

If the Review Commission is unable to assist in facilitating the sale of the distressed property despite providing a list of prospective buyers, a Member of the Review Commission, as a **part-time appointed** (emphasis supplied) public official, may purchase the property subject to the following limitations: he or she may not use confidential information acquired in course of his official duties to further his own personal interests or the interests of another person and must recuse him or herself from all matters relating to the property.

AO 2012-39 County Commissioner - A County Commissioner who owns a business with the County Prosecuting Attorney may vote and participate in matters relating to the Prosecuting Attorney's Office, particularly as the County Commission exercises no control over the Prosecutor's salary which is set by statute, not by the County Commission. Hence, the County Commissioner does not have a prohibited financial interest in the operation of the Prosecutor's Office.

AO 2012-40 County Assistant School Superintendent – An Assistant Superintendent's spouse may not subcontract with a company on county school projects in the county where his wife is employed as her public position gives her voice, influence or control over the contract(s) in question.

AO 2012-41 County Board of Health - It is permissible for a licensed septic tank cleaner to serve on the County Board of Health and to apply to the Board of Health for a tri-annual license which authorizes him to clean sewage tanks in the county where he serves.

AO 2012-42 Conservation District - May award \$500 scholarship per calendar year to District supervisor's child so long as District supervisor recuses him/herself from all participation in selection of scholarship participants, leaves the room during discussion and decision making period, and fully discloses his or her interests. District supervisor may not informally "lobby" or otherwise attempt to influence voting members of, or other decision-makers in, the government agency to select his/her child.

AO 2012-43 Local Health Department - May serve as pass-through for grant from private charitable foundation for benefit of two private entities that focus on health when Department derives no financial benefit in serving as pass-through and no employee or member of Department or business with which he or she is associated is party to or has an interest in profits or benefits of grant agreement or any other related contract.

Serving as pass-through constitutes performance of usual and customary duties associated with office.

AO 2012-44 State Agency - May appropriate a de minimis amount of State resources (\$1,500) to a related Association to provide matching funds to allow the Association to secure a grant. Executive Director of State Agency who serves on the Association's Board at Agency's request may be involved in advising Agency regarding distribution of money to Association because serving on Association's Board is part of Director's public job duties and Association's mission is to assist other non-profit entities, not the Director's public employer. Chairperson of State Agency who serves on Association's Board by virtue of his/her private employment with a large non-profit should recuse himself from voting on contributing money to Association.

AO 2012-45 – A County Attorney may only be paid additional compensation for work he performed on behalf of the County Building Commission if the County Commission or County Commission seeks and receives a contract exemption. This step is necessary as a County Attorney exercises voice, influence and control over county contracts.

AO 2012-46 City Council Member/Assistant Attorney General - May serve on City Council although Council Member's law firm contracts with City. Does not have prohibited financial interest in contract between law firm since Council Member is employee of law firm, not owner or director. May not: (1) receive any commissions or remuneration as a result of contract between law firm and City; (2) work behind the scenes to steer business to law firm; or, (3) participate in deliberation or vote on matters relating to contract with his firm, e.g. approving invoices.

AO 2012-47 County Commission - May appoint a County Commissioner to serve as a voting member of a County Ambulance Authority, a subunit of county government. Should consult with its attorney on whether other laws permit proposed self-appointment, especially when enabling legislation does not specifically authorize self-appointments and position is compensated. County Commissioner may vote on matters affecting the County Ambulance Authority which come before County Commission.

AO 2012-48 State Licensing Board - May not hire candidate for executive director when candidate rents from Board Member who is also subject to the Board's regulation. Although candidate received property exemption to lease from Board Member, its terms require him and his subordinates to be removed from all matters affecting Board Member. Impossible for candidate to comply with requirements of property exemption due to Board's small staff, administrative structure, and business relationship between candidate and Board Member.

AO 2012-49 County Farmland Protection Board - May solicit because enabling legislation expressly authorizes. Limitations apply. May not solicit donations—orally or in writing—from anyone whose application for participation in any of its programs is pending at time of solicitation. Establishes rules for solicitation by the Board.

AO 2012-50 Sheriff - May not expend surplus money in Concealed Weapons Fund for meals for staff meetings. May not use Concealed Weapons Fund for personal gain of any person(s); must be an authorized expenditure; and any expenditure must be related to law-enforcement purposes or operating needs of Sheriff's Office, e.g. purchase of office furniture or weapons.

AO 2012-51 Assistant Attorney General - May also serve as elected City Council Member. Must perform City Council duties on own time, not during public work hours. May be required to file time records with Ethics Commission if he has regular work hours at State job, and is authorized to make up hours to perform duties of City Council position. Although Ethics Act permits Assistant Attorney General to serve as elected City Council Member, Ethics Commission has no jurisdiction to rule whether West Virginia Constitution permits it, or applicability, if any, of common law doctrine of incompatibility.

AO 2012-52 Municipal Public Servant – Municipalities may only authorize its employees to use municipal equipment in limited circumstances. The opinion outlines the restrictions including a requirement that the municipality adopt a policy and require its employees to pay fair market value if in fact the municipality authorizes such use.

AO 2012-53 County Board of Education – Establishes rule of law for County Board of Education Members voting on expense reimbursement requests when a majority of the Members attend the same training session.

Contract Exemptions

CE 2012-01 Webster County Commission - Granted another exemption permitting County Commission to pay utilities and nominal rent to Prosecuting Attorney whose building is used as Prosecutor's office during construction of a new building. (Exemption expires July 1, 2014).

CE 2012-02 Town of Handley - Granted third exemption authorizing continued employment of Mayor as Police Chief where Mayor receives \$100 monthly salary and an additional \$250 monthly to serve as Chief of Police until August 5, 2014 so long as: (1) the Mayor does not serve as Municipal Judge; and (2) the Mayor only uses the police cruiser for official business even if on duty 24/7 (this limitation and all limitations from prior exemptions are incorporated by reference). (Exemption expires 8/5/2014).

CE 2012-03 City of Sistersville - Granted exemption to allow City to purchase property at a price not to exceed \$8,000 upon proof that prohibiting it from buying the subject property from Mayor will result in excessive cost, undue hardship and other substantial interference with governmental operations as there does not appear to be other suitable property available for this purpose.

CE 2012-04 Brooke County Commission - Granted exemption to enter into a lease for office space with County Prosecuting Attorney when: no space is available in County Courthouse; no cost-efficient space is available near Courthouse; proposed space to be leased has functioned as County Prosecutor's Office for past fifteen years; County Commission may terminate lease upon thirty days written notice without cause should other space become available; and, proposed rent is fair considering area market values.

CE 2012-05 Town of Fairview - Granted one year exemption to contract with Town Council Member to perform odd jobs for Town when the Council Member performs these services at a low hourly rate; Council Member has not received a windfall by virtue of his work for town; reliable workers are hard to find; and there is not enough work to justify adding an employee.

CE 2012-06 Town of Junior - Granted contract exemption to allow its Mayor to be compensated as a temporary employee in emergency situations until January 15, 2014 subject to conditions. Mayor may be compensated only for emergency fill-in work pursuant to rate and terms set forth in the exemption.

Open Meetings Opinions

OMAO 2012-01 Raleigh County Commission – The Open Meetings Act does not require governing bodies to post their meeting notices via legal advertisement although other statutes may, at times, require a meeting or hearing to be legally advertised.

OMAO 2012-02 Bridgemont Community & Technical College - Transportation Engineering Certification Board, comprised of public employees and private sector representatives, is subject to the Open Meetings Act. Transportation Engineering Certification Board is not required to make certification decisions during regular scheduled public meetings, but may do so in a quasi-judicial meeting.

OMAO 2012-03 Martinsburg-Berkeley County Convention and Visitors Bureau - Non-profit organization not within statutory definition of public agency so not subject to Open Meetings Act.

OMAO 2012-04 Elk Conservation District - Must either identify on agenda each invoice and amount to be approved for payment, or state on agenda that a list of invoices, or the invoices themselves, are available for public review. The list of invoices, which includes the name of each vendor and the amount owed to each, must be available for public review at least two business days before the meeting, not counting the day of the meeting, or may have all invoices being considered available for review. When considering award of grant or request for money, agenda must identify potential recipient by name, but may omit amount. Minutes must include both the name of the recipient and the amount awarded

OMAO 2012-05 - The Outdoor Heritage Conservation Fund – This Committee may go into executive session to discuss grant applications for conservation easements.

Administrative Law Judge Code of Conduct

ALJAO 2012-01 - ALJ's previous law enforcement career does not require him to be disqualified from hearing cases in which law enforcement officials are witnesses. ALJ may not preside over proceedings in which his son is a witness, or participated in the investigation of the matter which is pending before the ALJ.

ALJ's membership in law enforcement social/charitable organization to which other officers who testify before the ALJ's agency belong does not meet the definition of a proceeding in which the ALJ's impartiality might reasonably be questioned. Hence, recusal is not required.

ALJAO 2012-02 - The assignment of one agency's ALJ to hear cases for another, related agency does not violate the ALJ Code of Conduct so long as the related agency does not interfere with the independence of the ALJ. The related agency's creation of files and scheduling of hearings constitute ministerial tasks and thus do not compromise the integrity of the judicial process requiring disqualification. If the related agency were to direct the ALJ to rule in the related agency's favor, or otherwise exercise substantive control over the proceeding or outcome, then the ALJ Code of Conduct would be implicated.

ENFORCEMENT

The Commission is charged with enforcing the West Virginia Ethics Act. Citizens may file a Verified Complaint. The Commission may initiate a complaint by majority vote if it receives or discovers credible information, which, if true, would merit an inquiry into whether a violation of this article has occurred. W.Va. Code § 6B-2-3a. As part of this process, Commission staff conducts informal investigations for purposes of obtaining evidence to assist the Commission in evaluating matters of concern brought to its attention. These investigations may result in the resolution of matters of concern via Conciliation Agreements before a formal complaint is filed.

In 2012 there were 19 conciliation agreements approved by the Commission. There was one public hearing before an Administrative Law Judge (ALJ). The final decision has not been entered.

Verified Complaints

Year	Total Filed	Commission Initiated (of total filed)	Dismissed Failure to State a Claim	Investigated	Dismissed After Investigation (No Probable Cause)	Resolved via Conciliation Agreement

2010	42	6	10	35	1	5
2011	51	3	24	35	12	11
2012	120	2	47**	73**	9**	18**

** Includes Conciliation Agreements for complaints filed in preceding year(s).

Conciliation Agreements Approved in 2012

VCRB 2009-19 & CIC 2011-03: Former Board of Education Superintendent

RELEVANT FACTS: Respondent used his position to benefit others by: (1) re-writing job description and telling interview committee to choose his candidate; and (2) paying volunteer coaches unearned and/or illegal compensation. Further, the Respondent instructed his subordinates to give misleading material information to the Ethics Commission.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for the private gain of another. West Virginia Code §6B-2-10(f) prohibits any person from knowingly giving false or misleading material information to the Ethics Commission or including another person to give false or misleading material information to the Commission.

FINAL RESULT: On December 6, 2012, in consideration for the settlement and resolution of these complaints, Respondent agreed to be publicly reprimanded and a fine not to exceed \$7,500.00.

VCRB 2010-31: Elected Assessor

RELEVANT FACTS: Respondent routinely took cash collected by the Assessor's Office for dog licenses and registrations for herself and her family member's personal use; used public resources (including equipment and staff) for her own private gain, as well as the private gain of another in furtherance of her private business and/or family matters; took stamps from the Assessor's Office for her own personal use, without reimbursing the County; and, over the past several years the Respondent submitted and paid herself reimbursement for travel that was non-Assessor related and/or incorrect. Further, her requests for mileage reimbursements used a higher price per mile than authorized.

RELEVANT LAW: West Virginia Code § 6B-2-5(b) prohibits use of public office for private gain. West Virginia Legislative Rule § 158-6-5 generally prohibits the use of government property for personal projects or activities that result in private gain.

FINAL RESULT: On October 4, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to be publicly reprimanded; Cease and Desist from personal use of public monies and resources, including specifically stamps; Cease and Desist from use of public equipment, including computer, copier and printer, for non-

Assessor related activities; Cease and Desist from conducting any non-Assessor related work in the Assessor's office and/or County Courthouse; pay the County Commission \$1,000.00 as restitution for the monetary equivalent of time and resources spent in furtherance of her private activities; pay the County Assessor's Valuation Fund \$500.00 as restitution for errors in travel reimbursements; pay the West Virginia Ethics Commission \$750.00 as reimbursement for the cost of investigation; and, pay a fine in the amount of \$4000.00. Further, Respondent is to institute and comply with administrative controls for review and approval of Respondent's travel and expense reimbursements and cease from claiming mileage reimbursement for daily/routine Assessor within the County; and seek reimbursement only for Assessor-related activities involving training or meetings attended where the overriding purpose of the training/meetings relate to her duties as Assessor.

VCRB 2010-36: Elected Circuit Clerk

RELEVANT FACTS: Respondent contracted with a technology company to develop a case management system. Around this period of time, the Supreme Court formed a Committee to study the possibility of Circuit Clerks, statewide, digitizing orders. In June of 2010, the company's owner sent a letter and brochure to all Circuit Clerks under the Respondent's name, office seal and title.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain. In Advisory Opinions 2000-19, 2000-21, 2001-15, 2002-18, 2005-02, 2005-10 and 2009-12, the Ethics Commission ruled that W.Va. Code § 6B-2-5(b) prohibits public servants and entities from endorsing or recommending a product, service or company.

FINAL RESULT: On June 28, 2012, in consideration for the settlement and resolution of this matter, Jean Friend agreed to Cease and Desist from endorsing or recommending any product, service or company, and seek an advisory opinion from the West Virginia Ethics Commission asking what constitutes endorsing or recommending a product, service or company. Please see Advisory Opinion 2012-31.

VCRB 2011-17: Former City Council Member

RELEVANT FACTS: Respondent violated the Ethics Act by signing the town's check in the amount of \$500.00 for the City Manager without City Council approval.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain. West Virginia Constitution, Article VI, Section 38 embodies State policy that salaries of public officials shall not be increased or decreased during their terms in office unless the officials are required to have substantial new duties.

FINAL RESULT: On December 6, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to Cease and Desist from this conduct should he become a public official or employee in the future. Further, Respondent

agreed to seek training from the Executive Director of the West Virginia Ethics Commission, or her designee, should he become a public official or employee in the future. (He has since obtained the required training).

VCRB 2011-18: Former Mayor

RELEVANT FACTS: Respondent violated the Ethics Act by signing the town's check in the amount of \$500.00 for the City Manager without City Council approval.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain.

FINAL RESULT: On December 6, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to Cease and Desist from this conduct should he become a public official or employee in the future. Further, Respondent agreed to seek training from the Executive Director of the West Virginia Ethics Commission, or her designee, should he become a public official or employee in the future.

VCRB 2011-36: Mayor

RELEVANT FACTS: Respondent appointed herself as Town Water Commissioner and Sewer Commissioner; failed to recuse herself during a Town Council meeting in which she had a financial interest; received a raise; and, converted her Commissioner positions into compensated employment positions for herself with the Town.

RELEVANT LAW: W.Va. Code § 6B-2-5(b) prohibits use of public office for private gain. West Virginia Code §6B-2-5(j) states for a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. West Virginia Constitution, Article VI, Section 38 embodies State policy that salaries of public officials shall not be increased or decreased during their terms in office unless the officials are required to have substantial new duties.

In Advisory Opinion 2010-08, the Ethics Commission ruled that a public official's vote to extend her or his own current term beyond that statutorily or constitutionally prescribed, resulting in the official obtaining extra compensation, constitutes use of public office for private gain in violation of W.Va. Code § 6B-2-5(b). In Contract Exemption 2009-01, the Ethics Commission denied the Town of Mabscott's request to employ its Mayor as Police Chief, Head of the Street Department, and/or Assistant Fire Chief.

FINAL RESULT: On October 4, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to a public reprimand; Cease and Desist from accepting any payment as Commissioner of the Sewer and Water Departments; or any other form of compensation other than Mayoral salary; pay the Town \$1,250.00 as

reimbursement for the five month increase in compensation; and, pay a \$500.00 fine to the West Virginia Ethics Commission.

VCRB 2012-04: Council Member

RELEVANT FACTS: Respondent had been an elected council member of the City since May 2007. Before the Respondent was elected to Council, the City conducted business with a printing house, where the Respondent worked for decades. In 2006, the Respondent purchased the printing house. In 2010 and 2011, Respondent/his printing house conducted business with the City and the City did not put any of the printing business out to bid, or obtain a contract exemption from the Ethics Commission.

RELEVANT LAW: West Virginia Code § 6B-2-5(b) prohibits use of public office for private gain. West Virginia Code § 6B-2-5(d) prohibits public servants from having an interest in public contract over which they exercise control. Subsection (d) further provides that a governing body may obtain a contract exemption from the Ethics Commission when forbidding a contract results in undue hardship, excessive cost or substantial interference with government operations.

FINAL RESULT: On April 12, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to Cease and Desist from engaging in business transactions with the City unless and until the West Virginia Ethics Commission provides authorization.

VCRB 2012-42: Appointed Member, Municipal Historic Preservation Review Committee

RELEVANT FACTS: The Historical Preservation Review Committee was considering a request to demolish several historical buildings. The owner, for financial reasons, wanted to demolish it, but due to its historical significance, could not do so without prior approval from the Committee. The Respondent stated that he was not in favor of demolishing one of the buildings. After discussion, the Committee unanimously denied the owner's request to demolish the building in question. Following this vote, Respondent indicated that he would seek a potential buyer of the property. Respondent went on to say to the seller that, if worse comes to worse, he would consider purchasing the buildings himself.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain. Public officials must comply with the voting rules prescribed in subsection (j) of this section.

FINAL RESULT: On September 6, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to (1) Cease and Desist, during Committee proceedings, from indicating that Respondent may consider purchasing properties which are the subject of demolition proceedings before the Committee; (2) Cease and Desist, during Committee proceedings, from offering to find buyers for properties which

are subject of the demolition proceedings before the Committee; and (3) Cease and Desist from purchasing and/or finding buyers for such properties until a formal advisory opinion is issued by the Ethics Commission. He also agreed to seek an advisory opinion. Please see Advisory Opinion 2012-38.

VCRB 2011-41, VCRB 2011-48 and VCRB 2012-03: Former Elected Assessor

RELEVANT FACTS: Respondent is a former Assessor who violated the Ethics Act by hiring two relatives and two relatives of co-workers without giving proper notice of the job postings. The Respondent also approved a pay raise for her mother.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain. West Virginia C.S.R. § 158-6-3 contains guidelines governing nepotism.

FINAL RESULT: On April 12, 2012, in consideration for the settlement and resolution of this matter, Respondent paid a fine in the amount of \$250.00 and will not run for nor accept appointment for any elected county office for two years following the approval of the Conciliation Agreement.

VCRB 2011-45 and VCRB 2011-46: Mayor

RELEVANT FACTS: Respondent used the Town's credit card and E-Z turnpike pass without authority for his personal use on numerous occasions. Although he lacked authority to use the cards, he did immediately reimburse the town for all the charges he knew to be personal. Additionally, the Respondent made some improper purchases of meals which should not have been charged to the town.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain.

FINAL RESULT: On September 6, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to (1) Pay a fine in the amount of \$250.00; (2) Attend training on the Ethics Act; (3) Mandate city employees to attend training on the Ethics Act; (4) Organize training on the Ethics Act for the current city council members; (5) Pay Restitution in the amount of \$223.74 for personal use of gasoline and unauthorized food purchases; (6) Cease and Desist using the town's credit card; and (7) Public reprimand.

VCRB 2011-16: Former City Manager

RELEVANT FACTS: Respondent admitted he violated the Ethics Act by securing payment from the city clerk of \$500.00 for unpaid medical insurance benefits without prior city council approval. The Respondent claims that he thought at the time that he had independent authority to issue payment up to the amount of \$1,000.00. The Respondent also asserts that he thought City Council had given him authority to issue the check at an earlier council meeting. He did not cash or deposit the check.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain.

FINAL RESULT: On September 6, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to (1) Cease and Desist from this conduct should he become a public official or employee in the future.

VCRB 2012-78: Municipal Police Chief

RELEVANT FACTS: Respondent violated the Ethics Act by using the City's equipment for his own personal benefit and the benefit of others.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain. (1) 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. West Virginia Legislative Rule § 158-6-5 generally prohibits the use of government equipment property for personal projects or activities that result in private gain.

FINAL RESULT: On December 6, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to Cease and Desist from using City owned equipment unless and until authorized by the Ethics Commission; pay restitution to the City in the amount of \$150.00 for using City equipment for his own personal benefit and for the benefit of others; and, to pay a fine to the West Virginia Ethics Commission in the amount of \$300.00. Further, Respondent agreed to seek a formal advisory opinion from the Ethics Commission which sets forth what circumstances, if any, a municipality may permit its officials and/or employees to use public resources for personal purposes and to comply with the ruling set forth in the advisory opinion. Please see Advisory Opinion 2012-52.

VCRB 2012-79: City Employee

RELEVANT FACTS: Respondent violated the Ethics Act using the City's equipment for his own personal benefit and others.

RELEVANT LAW: West Virginia Code § 6B-2-5(b) prohibits use of public office for private gain.

FINAL RESULT: On December 6, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to Cease and Desist from using City owned equipment unless and until authorized by the Ethics Commission; pay restitution to the City in the amount of \$150.00 for using City equipment for his own personal benefit and for the benefit of others; and, to pay a fine to the West Virginia Ethics Commission in the amount of \$300.00.

CIC 2008-02: Former Sheriff

RELEVANT FACTS: Respondent was an elected Sheriff. Sometime in April 2006, the Respondent's son stole one or more County issued gasoline credit cards from the Respondent, and made unauthorized charges thereon. Respondent was not aware of the theft at the time. Sometime in May 2006, a friend of the Respondent's family informed the Respondent that his son had stolen his County issued gasoline credit cards and was using them. The Respondent took no action upon receiving this information.

Sometime in June 2006, an employee of the Sheriff's office raised concerns about what she considered to be erratic charges on a County issued credit card. She brought her concerns to a Chief Deputy. On the morning of June 16, 2006, the Chief Deputy instructed a deputy to investigate the charges on the County issued credit card. Later that same day, the Respondent told the Chief Deputy to call off the investigation. When the Chief Deputy told the Respondent the matter should be investigated, the Respondent refused because he considered himself the victim and said he did not want to prosecute. The Respondent reimbursed the County for the unauthorized charges. The Respondent's son was later indicted for his actions.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain.

FINAL RESULT: On August 2, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to (1) Public reprimand; (2) Reimburse the WV Ethics Commission \$2,000.00 for costs incurred to investigate the complaint and (3) Pay a \$1500.00 fine to the West Virginia Ethics Commission.

CIC 2010-02 Former Employee of City Wastewater Treatment Plant

RELEVANT FACTS: Respondent admitted he violated the Ethics Act when he operated his private business from the City wastewater treatment lab and provided false and misleading material information to the Commission in violation of West Virginia Code § 6B-2-10(f).

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain. West Virginia Code § 6B-2-10(f) provides, in relevant part, that a person who knowingly gives false or misleading material information to the Commission is subject to administrative sanction by the Commission.

FINAL RESULT: On February 2, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to (1) A public reprimand; (2) Pay \$2,628.00 to the City as restitution to the city for using public time and resources in furtherance of his private business activities; (3) Pay \$500.00 to the West Virginia Ethics Commission for reimbursement for investigating the matter; and (4) Pay a \$7,500.00 fine to the West Virginia Ethics Commission.

CIC 2010-03 Former Employee of City Sanitation Department

RELEVANT FACTS: Respondent admitted he violated the Ethics Act when his supervisor allowed him to perform work for their private company during his work hours.

RELEVANT LAW: West Virginia Code § 6B-2-5(b) prohibits use of public office for private gain.

FINAL RESULT: On August 2, 2012, in consideration for the settlement and resolution of this matter, Respondent agreed to (1) Pay \$1,000.00 to the City as restitution to the city for using public time and resources in furtherance of his private business activities; and (2) Pay a \$100.00 fine to the West Virginia Ethics Commission.

Informal Complaint: County School Athletic Director

RELEVANT FACTS: The Athletic Director testified before the Ethics Commission regarding a complaint matter. During his testimony, in an effort to save his job, the Respondent was not completely forthcoming to the Ethics Commission. Upon learning that the Ethics Commission suspected he did not tell the truth during his testimony, the Respondent informed the Ethics Commission he was instructed by the County School Superintendent to get his "story" straight.

RELEVANT LAW: West Virginia Code § 6B-2-10(f) states: Any person who knowingly gives false or misleading material information to the Commission or who induces or procures another person to give false or misleading material information to the Commission is subject to administrative sanction by the Commission as provided in subsection (r), section four of this article.

FINAL RESULT: On May 3, 2012, in consideration for the settlement and resolution of this matter, the Commission declined to impose sanctions based upon the unique circumstances involved, his acknowledgement of wrongdoing, and his willingness to publicly accept responsibility for his actions through signing the Conciliation Agreement.

Informal Complaint: High School Principal

RELEVANT FACTS: The High School Principal was informed by the building construction class teacher that bigger projects were needed for the students to further their building skills. She allowed the high school's building construction class to construct a deck on her daughter's home. She paid for all the building materials. The students' labor, per the normal practice for class projects, was provided free. The deck was built on the high school campus from November to December 2011. It was disassembled to transport to her daughter's house; however, due to inclement weather, it was not assembled at her daughter's house until March 28, 2012.

RELEVANT LAW: West Virginia Code §6B-2-5(b) prohibits use of public office for private gain. West Virginia Code §6B-2-5(d) prohibits public servants from having an interest in public contract over which they exercise control.

In Advisory Opinions 90-162, 93-21 and 99-02 the Ethics Commission ruled that W. Va. Code § 6B-2-5(d) and/or W. Va. Code § 61-10-15 prohibits directors of vocation schools from being the beneficiary of a vocational school project.

FINAL RESULT: On August 2, 2012, in consideration for the settlement and resolution of this matter, the Commission declined to impose sanctions based upon the unique circumstances involved, the Principal acknowledged her wrongdoing and publicly accepted responsibility for her actions. She will work with the Ethics Commission's staff and the State Department of Education to have the Agreement disseminated to school personnel throughout the State.

Informal Complaint: High School Principal

RELEVANT FACTS: The High School Principal testified before the Ethics Commission regarding a complaint matter. During his testimony, in an effort to save his job, the Respondent was not completely forthcoming to the Ethics Commission. Upon learning that the Ethics Commission suspected he did not tell the truth during his testimony, the Respondent informed the Ethics Commission he was instructed by the County School Superintendent to get his "story" straight.

RELEVANT LAW: West Virginia Code § 6B-2-10(f) states: Any person who knowingly gives false or misleading material information to the Commission or who induces or procures another person to give false or misleading material information to the Commission is subject to administrative sanction by the Commission as provided in subsection (r), section four of this article.

FINAL RESULT: On May 3, 2012, in consideration for the settlement and resolution of this matter, the Commission declined to impose sanctions based upon the unique circumstances involved, his acknowledgement of wrongdoing, and his willingness to publicly accept responsibility for his actions through signing the Conciliation Agreement.

Informal Complaints

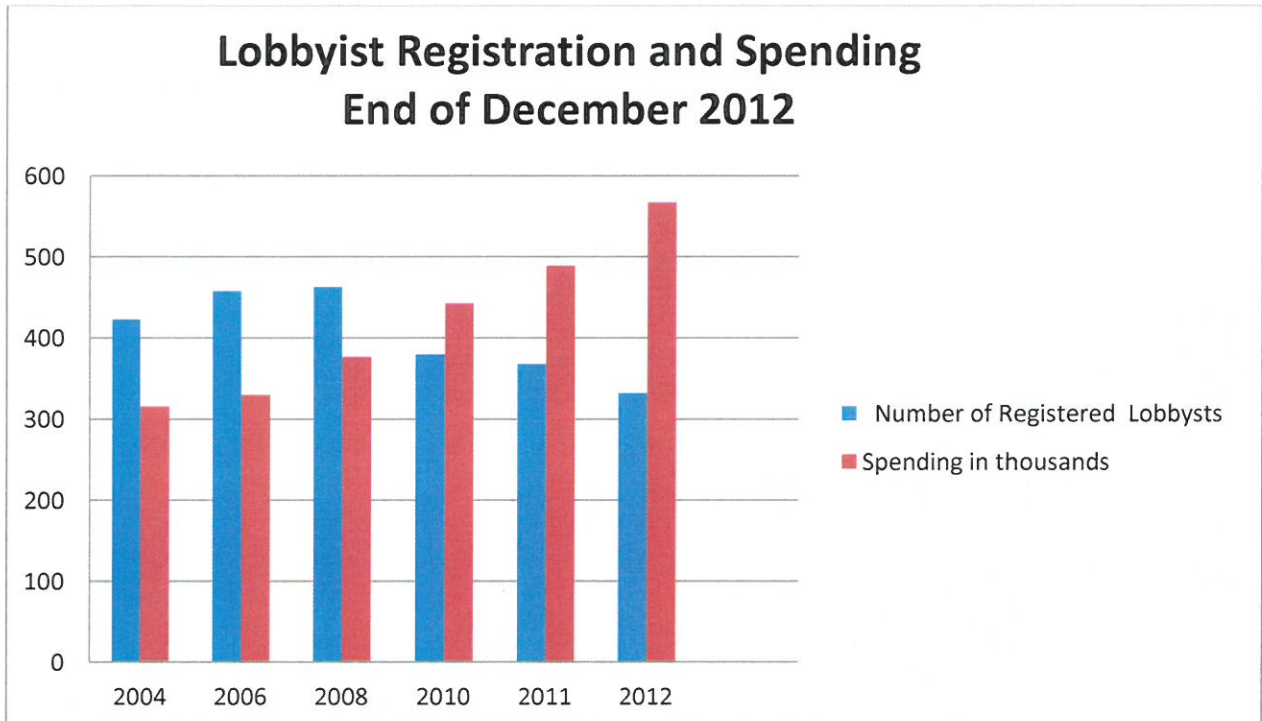
YEAR	RECEIVED
2010	63
2011	54
2012	75

LOBBYISTS

The Ethics Act requires anyone who is compensated to lobby in support of or in opposition to any legislation or legislative or administrative rules, or who spends over

\$150 annually on public officials in furtherance of such activity, to register with the Ethics Commission. Registered lobbyists are required to file periodic reports of their lobbying activity, including reporting certain expenses. These reports are public records and are subject to random audits by the Commission. In 2012 there were 332 active registered lobbyists. Lobbyist expenditures, which include campaign contributions, totaled \$566,785.00.

The following is an overview of the number of lobbyists registered, and their spending activity for the years 2004, 2006, 2008, 2010, 2011 and 2012.



FINANCIAL DISCLOSURE STATEMENTS

Certain public officials and candidates are required to file financial disclosure statements with the Commission. Candidates for all state and county offices must file a financial disclosure statement within ten days after he or she files a certificate of candidacy. Those persons who are elected to such positions thereafter file financial disclosure statements on an annual basis. In addition, all members of state boards, commissions and agencies who are appointed by the governor must file within 30 days after assuming their duties.

Annual statements are also required from cabinet secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, and department heads. These forms are public records available for inspection in the Commission's offices during normal business hours. In 2012, there were 3,614 forms filed with the Commission.

CONCLUSION

In 2012, the Commission continued its outreach and education efforts. As part of these efforts, it trained, in-person, 2457 public servants. Based upon information and belief, this figure represents the greatest number trained in one year in Commission history. Further, the Commission approved 18 Conciliation agreements to resolve pending complaints; the most enforcement action taken during the history of the Commission. While our focus remains on education and outreach as the key component to creating an ethical and fair environment in the State of West Virginia, the Commission stands ready and willing to take administrative enforcement action when warranted.