West Virginia Ethics Commission

2019 Annual Report

West Virginia Ethics Commission
210 Brooks Street, Suite 300
Charleston, West Virginia 25301
(304) 558-0664 (866) 558-0664; Fax (304) 558-2169
ethics.wv.gov

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 2019 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 Tweel Huntington, WV	Terry Walker Kearneysville, WV	Monté Williams Morgantown, 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. Members in 2019 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. Stepto
Executive Director

Kimberly B. Weber
General Counsel

Andrew R. Herrick
Staff Attorney

Theresa M. Kirk
Staff Attorney

Derek A. Knopp
Staff Attorney

Teri L. Anderson
Lobbyist Registrar

M. Ellen Briggs
Executive Assistant

Budget

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

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, a new Advisory Opinion may be requested.

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

2019	391
2018	414
2017	391
2016	476
2015	475

Formal Opinions/Exemptions

The Ethics Commission issues formal Advisory Opinions which respond to questions relating to the application of the Ethics Act. It also issues Opinions regarding W. Va. Code § 61-10-15 (relating to county employees' 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 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.

Following are five-year calendar year totals of formal Opinions issued regarding the Ethics Act, 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
Ethics	24	15	21	9	28
Open Meetings	3	3	2	2	4
ALJ Code of Conduct	0	0	0	0	1
Contract Exemptions	3	5	7	6	4
Employment Exemptions	18	48	34	69	57
Property Exemptions	0	0	1	1	0
School Board	0	0	1	0	0
TOTAL:	48	71	66	87	94

Ethics Act Advisory Opinions

Advisory Opinion 2019-01 – A State Agency

Category: Gifts - Acceptance and Solicitation

A State Agency may solicit funds for the charitable purpose of fostering women's health and wellness. The Agency may use solicited funds for operating expenses because the programs it administers in support of its mission are statutorily authorized and intended to help the poor and disadvantaged. The Agency may not have a public official or employee solicit funds for his or her own salary as this action would result in a direct pecuniary benefit to a public official or public employee.

Advisory Opinion 2019-02 – A State Agency Manager

Categories: Private Gain; Name or Likeness

A State Agency may use public funds to print personal contact information on elected officials' business cards because communicating with constituents is part of the usual and customary duties associated with the office. Providing the personal contact information makes officials more accessible, which serves a public purpose, and does not violate the private gain provision of the Ethics Act. The use of personal contact information does not have the primary purpose of promoting the elected officials, so the use of public funds to print business cards does not violate the name or likeness provision's prohibition on advertising.

Advisory Opinion 2019-03 – County School Superintendent

Categories: Private Gain; Nepotism

Teachers prearranging for relatives to substitute and/or placing relatives on a preferred list of substitutes violates the Ethics Act's nepotism provisions when there are others, such as a principal, with the authority to make these decisions.

Advisory Opinion 2019-04 – A City

Categories: Persons Covered by the Act; Prohibited Contract

A City's Fire Chief, who is also the Fire Chief for a VFD which provides fire protection services to the City, is a part-time appointed public official who is subject to the Ethics Act. A City may not make purchases from a Fire Chief's business, either directly or through a reimbursement request from the VFD, in instances where he has been involved in the purchasing decisions because the part-time appointed official exception in the Act would not apply. The City may make purchases from the Fire Chief's private business if it is willing and able to remove him from participating in decisions involving the purchase of equipment or supplies for the City Fire Department and/or the VFD.

Advisory Opinion 2019-05 – A State University Employee

Category: Financial Disclosure Statements

A director of an office of a state university is not required to file Financial Disclosure Statements because W. Va. Code § 6B-2-6(a)(3) does not apply to commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads of state colleges and universities.

Advisory Opinion 2019-06 – County Commission

Categories: Voting; W. Va. Code § 61-10-15

Neither the Ethics Act nor W. Va. Code § 61-10-15 prohibits three members of a County Commission from serving as three of the five members of a County Parks and Recreation Authority. Authority members receive no compensation or benefits for their service, and County Commissioners normally serve on county boards as a means for a County Commission to monitor and observe the workings of its boards. Other laws, such as the common law doctrine against self-appointment, may limit their service, however.

Advisory Opinion 2019-07 – County Commission

Category: W. Va. Code § 61-10-15

W. Va. Code § 61-10-15 prohibits a County Commission from appointing one of its own members to a County Emergency Services Authority when that member would receive more than nominal compensation for serving on the Authority. Authority members receive $200 per meeting, which the Ethics Commission found to be more than nominal. The County Commission also has the authority to set the compensation of its appointed

Authority members. The Opinion does not apply to situations where the law expressly requires a County Commissioner to serve on a board.

Advisory Opinion 2019-08 – A Mayor

Category: Voting

A Mayor may vote on matters affecting a proposed hotel development project near properties he owns because he is a member of a class of five or more similarly situated persons who own property near the hotel project.

No provision in the Ethics Act dictates whether a public agency may require the recusal of one of its members or exclude him or her from discussions and votes.

Advisory Opinion 2019-09 – A City Council Member

Categories: Conflict of Interest; Revolving Door

The Ethics Act's "revolving door" provision, at W. Va. Code § 6B-2-5(g), does not prohibit a City Council member from representing a client before the City's Board of Zoning Appeals in a building permit dispute.

Advisory Opinion 2019-10 – A County Commissioner

Category: Voting

A County Commissioner may participate in executive sessions, discussions and votes involving general matters that affect the County Development Authority on which her son serves as a board member. She may not, however, participate in matters which uniquely affect her son such as a disciplinary action against him.

Advisory Opinion 2019-11 – A Town

Categories: Private Gain; Voting; Gifts – Acceptance and Solicitation

The Ethics Act's solicitation provision, at W. Va. Code § 6B-2-5(c), does not prohibit a Town from soliciting another public agency -- the neighboring County's Sheriff's Department -- for retired police cruisers. The Ethics Commission was unable to determine whether donating police cruisers to a private college was permissible under other state statutes, common law or elsewhere. If donating the cruisers to the college is allowable, doing so would not violate the Ethics Act. The Ethics Act's voting provision for appropriations to non-profits, at W. Va. Code § 6B-2-5(j)(1)(D), prohibits Town officials

who are also current employees of a private, non-profit college from voting on whether the Town donates cruisers to the college. The voting provision does not prohibit retired college employees from voting.

Advisory Opinion 2019-12 – Assistant Prosecuting Attorney

Category: W. Va. Code § 61-10-15

W. Va. Code § 61-10-15 prohibits an assistant prosecuting attorney from contracting to provide legal services to a Board of Education in the same county in which the assistant prosecuting attorney serves. The assistant prosecuting attorney may have voice, influence or control over the contracts of the Board of Education as required by the duties of the office.

Advisory Opinion 2019-13 – An Officer of a State Agency

Category: Private Gain

A state agency officer may use his personal rewards cards when purchasing gasoline with a state-issued credit card and keep the bonus points for his personal use.

Advisory Opinion 2019-14 – A City Police Officer

Category: Private Gain

A city police officer may not include pictures of himself in uniform in his campaign material because the police uniform conveys the endorsement of his police agency, which is the type of private gain the Ethics Act is intended to prohibit.

Advisory Opinion 2019-15 – A Town Council Member

Category: Private Gain

A town council member may vote to approve payroll at future town council meetings when an incumbent mayor previously cast a tie-breaking vote on a motion to approve the second reading of an ordinance that increased the mayor's salary for the next term of office. The Ethics Act does not require the council member to determine whether another official's actions violate the Ethics Act, and no facts suggest that the council member is taking an affirmative step with the intent to improperly benefit a public official by voting to approve payroll at future meetings.

Advisory Opinion 2019-16 – Employee of State Agency

Category: Employment

A full-time state employee who regulates holders of unclaimed property, such as insurance companies, may moonlight for a private consulting firm whose clients include the same insurance companies. The private firm provides services to the insurance companies that are unrelated to unclaimed property. While the employee may provide private services for the consulting firm, he may not perform work for the insurance companies he regulates in his state job.

Advisory Opinion 2019-17 – State Board Member

Category: Private Gain

A part-time appointed state board member may, in his private capacity and for private pay, teach continuing education courses to licensees because the State Board has delegated the responsibilities for approving courses to its Education Committee and staff, the Board member does not serve on the Education Committee and he is not otherwise involved in approving continuing education courses. Limitations to this ruling are set forth in the Opinion.

Advisory Opinion 2019-18 – State Employee

Category: Private Gain; Conflict of Interest

A state employee may seek election to a county public office. In general, the Ethics Act contains no provision which prohibits state employees from seeking an elected public office. The Ethics Commission has no jurisdiction to rule whether other laws prohibit this. The employee may not campaign during public work hours or use public resources to subsidize his campaign.

Advisory Opinion 2019-19 – County Commission

Category: Gifts – Acceptance and Solicitation

A County Commission may not accept a donation of materials and labor from a local business to tint windows of its judicial annex if the donation was solicited by a county deputy. Tinting windows of the judicial annex, which were already tinted, does not constitute a charitable purpose under the Ethics Act.

Advisory Opinion 2019-21 – A State Employee

Category: Private Gain

A state employee may simultaneously serve as a part-time elected mayor. He must perform his mayoral duties on his own time and not during his public work hours unless he takes annual or unpaid leave.

Advisory Opinion 2019-22 – County Airport Authority Member

Category: Voting

An appointed Airport Authority member may vote on whether the Airport Authority should create a Convention and Visitors Bureau because the financial interest of her spouse's employer, a hotel, is too speculative to prohibit the Airport Authority member from voting. While Convention and Visitor Bureaus are funded by a hotel occupancy tax, the County already has such a tax and the power to increase the tax rate rests solely with the County Commission, a government agency consisting of elected members who are not under the authority or control of the Airport Authority.

The Airport Authority member may not vote on a hangar space lease with or the issuance of airfield passes to a hotel's parent company if the hotel by which her husband is employed uses the hangar space or passes.

Advisory Opinion 2019-23 – County Airport Authority Member

Categories: Employment; Voting; Conflict of Interest

No provision of the Ethics Act prohibits the Airport Authority member from continuing his employment with a hotel merely because it uses or benefits from the public services provided by the Authority. The Ethics Act does not generally prescribe who is eligible to serve on a public body. It does not prohibit the Authority member from simultaneously serving on the boards of the Airport Authority and the Chamber of Commerce while maintaining his employment with the hotel. A hotel's financial interest in the Airport Authority's vote to create a Convention and Visitors Bureau is too speculative to prohibit an Airport Authority member from voting because the county commission, not the Authority, decides whether to raise the hotel occupancy tax rate.

Advisory Opinion 2019-24 – Town Council

Category: Private Gain

A Town Council may not approve and pay an invoice submitted by the previous mayor's wife if the previous mayor made, participated in making, or in any way attempted to use his office to influence the town's decision with respect to his wife's work.

Advisory Opinion 2019-25 – A City Treasurer

Category: Private Gain

A city may provide meals to employees who are required to work beyond their normal work schedule due to an unscheduled emergency such as a water line break. Providing meals under these circumstances does not constitute prohibited use of office for private gain because there is a counterbalancing public benefit to having city employees remain on-site to respond to an emergency.

Advisory Opinion 2019-26 – A State Agency

Categories: Gifts – Acceptance and Solicitation; Private Gain

A state agency may raise funds and solicit donations to assist potential foster families in meeting requirements for their homes to become approved foster homes and to fund rewards and incentives to students who display positive behaviors because fundraising is not prohibited by the Ethics Act and the solicited donations would be used for charitable purposes.

Advisory Opinion 2019-27 – City Council Member

Categories: Conflict of Interest; Revolving Door

The Ethics Act's "revolving door" and prohibited representation provisions do not prohibit a City Council member from representing a client in traffic code violations before the city's Municipal Court. Adjudications made by the municipal court are made without input, approval or review of City Council. The Council member was accordingly found not to "serve" the municipal court pursuant to W. Va. Code § 6B-2-5(g) simply as a result of being a member of City Council. He therefore could represent clients in Municipal Court.

Advisory Opinion 2019-28 – Pre-candidate for Sheriff

Categories: Property Purchase Restrictions; Conflict of Interest

The Ethics Act permits a Sheriff to continue to operate a real estate business that leases and sells property to individuals and businesses in the same county. A Sheriff does not regulate or have ongoing matters before his office with all county residents and taxpayers

merely by providing routine police services or by performing the ministerial functions of collecting taxes which are not delinquent.

A Sheriff may not, however, seek to sell or lease property to persons who have been the subject of a regulatory matter within the last 12 months or which currently have a matter before the Sheriff's Office. Some examples of persons or businesses to whom a Sheriff may not sell or lease property include those who are: under investigation by the Sheriff's Office, delinquent in paying taxes or fees owed to the county or the subject of an outstanding warrant or civil or criminal process.

No provision of the Ethics Act prohibits the pre-candidate from personally operating his real estate business during his private time. The Ethics Act does not require him to hire a third party to manage his business. The Ethics Commission is not authorized to interpret W. Va. Code § 6-3-1(a)(5), which provides that some Sheriffs shall devote full time to their duties.

Advisory Opinion 2019-29 – A Sheriff's Office Employee

Category: Private Gain

A Sheriff's Office employee may seek election to a partisan public office. He may not campaign during public work hours or use public resources to subsidize his campaign. The Ethics Commission has no jurisdiction to rule whether other laws, including the Hatch Act, prohibit it.

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 four Open Meetings Act Advisory Opinions in 2019:

Open Meetings Advisory Opinion 2019-01 – Superintendent of Brooke County Schools

Category: Agenda/Notice

When counting business days under the Open Meetings Act, the day of the meeting, Saturdays, Sundays and legal holidays are excluded. Boards of Education are required to designate both "outside the school environment" days and "out-of-calendar" days in a school term. The Committee held that "outside the school environment" days and "out-of-calendar" days are not considered legal holidays and are therefore counted for purposes of computing time periods under the Open Meetings Act.

Open Meetings Advisory Opinion 2019-02 – City of Winfield

Category: Meeting Procedures

A public agency may not prohibit the public or the media from using equipment necessary for broadcasting, photographing, filming or recording a meeting unless it is to prevent undue interference with the meeting. The public's ordinary use of such equipment alone may not be declared to constitute undue interference. The Open Meetings Act permits a public agency to require the pooling of recording equipment if the size of the meeting room is such that all members of the public present and the equipment cannot be accommodated. Given the small size and non-disruptive nature of recording equipment today, the Committee found it difficult to envision a scenario where the size of the meeting room could not accommodate both the equipment to film a meeting as well as everyone present.

Open Meetings Advisory Opinion 2019-03 – Berkeley County Sheriffs Civil Service Commission

Categories: Meeting Defined; Executive Session

A quorum of the Sheriffs Civil Service Commission may meet outside of a public meeting to discuss logistical matters such as creating and publishing agendas and minutes and to receive budget information from staff. A quorum may not meet outside of a public meeting to discuss staff job duties, staff performance, appropriate office conduct or approving expenditures. The Commission may discuss specific personnel matters such as employee performance in executive session.

Open Meetings Advisory Opinion 2019-04 – The City of Charleston

Category: Agency

A City Youth Council, which was created by the Mayor and prepares recommendations to the Mayor on how to improve relationships between the City and its youth, is subject to the Open Meetings Act. In making this determination, the Committee on Open Governmental Meetings considered that the Youth Council's members are appointed by the Mayor, have fixed terms of office, have regularly scheduled quarterly meetings and are responsible for making recommendations to the Mayor on policy matters.

ALJ Code of Conduct Opinion

Administrative Law Judge Advisory Opinion 2019-01-R

Categories: Conflict of Interest/Recusal; Financial/Business Interests

A Chief ALJ must disqualify himself from any proceedings involving his former law firm so long as he continues to receive set retirement payouts from the firm. While there are no facts suggesting that the Chief ALJ will use his position to benefit his former firm, the financial relationship nonetheless creates a situation in which his impartiality might reasonably be questioned pursuant to W. Va. Code R. § 158-13-4.3.d.1.

Additionally, the Chief ALJ is not required to disqualify himself from permitting his boilerplate signature to appear on routine correspondence, such as Acknowledgements and Time Frame Orders, because such actions are non-discretionary in nature. Pursuant to W. Va. Code R. § 158-13-4.3.d.1.B, during his full tenure as Chief ALJ, the ALJ is disqualified from hearing any matters in which he or an associate previously served as a lawyer in the matter.

Finally, the ALJ must disqualify himself when a former client he represented within the preceding two years appears before his agency. The ALJ Committee considered its past AOs, which required ALJs to disqualify themselves from matters brought by former clients for their entire tenure as ALJs. The Committee held that the prior AOs were unduly harsh. The two years begins to run when the final business and financial relationship with the former client ends, including the payment of all fees owed to the Chief ALJ.

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 2019 in the following matters:

CE 2019-01 – Wyoming County Health Department

The Ethics Commission granted an exemption to the Wyoming County Health Department authorizing it to continue contracting with Family Healthcare Associates Inc. for medical services for its women's health program for a period not to exceed three years. The Health Department requested the exemption due to the ownership interest of its Health Officer in Family Healthcare Associates and because the Board's Chairperson resides with a part-owner of the business.

CE 2019-02 – Town of Danville

The Ethics Commission granted an exemption to the Town of Danville authorizing it to continue contracting with Byrnside Hardware and Barker Hardware, which are owned by a Town Council member and Town Recorder, respectively, for purchases in an amount not to exceed $2,000 from both stores. The exemption was granted for a period beginning on the day the Town expends the original $4,000 granted to it in Contract Exemption 2018-07 and ending on November 1, 2019.

CE 2019-03 – Sheriff of Hardy County

The Ethics Commission granted an exemption to the Sheriff authorizing his office to contract with TJM Enterprises, LLC, a business owned by one of his deputies, to install equipment on two new police vehicles in an amount not to exceed the $3,500 bid amount. The Deputy must perform the work on his own time and may not use Sheriff's Department resources.

CE 2019-04 – Clay County Commission

The Ethics Commission granted an exemption to the Clay County Commission to continue contracting with King's Wrecker Service for wrecker services in the Clay area with the following limitations. King's may only be used for towing ambulances or emergency vehicles. The total amount for services received from King's may not exceed $3,000 for a period of one year. The County Commission must seek reimbursement from King's in the amount of $570 for the payment that was not exempt from the prohibition in W. Va. Code § 61-10-15 due to failure to follow the Ethics Commission's limitations in Contract Exemption 2018-06. The County Commission may only pay King's for services when it is the closest wrecker service to the ambulance or emergency vehicle. The owner of King's may not be involved in any decisions relating to utilizing King's.

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 2019.

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 with whom they or a subordinate exercise control at present or in the prior 12 months.

The following Employment Exemptions were granted during 2019:

EE 2019-01 Denvil A. Reed, Assistant District Engineer, Maintenance, Department of Transportation, Division of Highways

EE 2019-02 David K. Hoffman, II, Project Control Supervisor, Technologist, Department of Transportation, Division of Highways

EE 2019-03 Gary Alvis, Maintenance Office Engineer, Department of Transportation, Division of Highways

EE 2019-04 Robert Milliken, District 6 Construction Office Manager, Department of Transportation, Division of Highways

EE 2019-05 Joseph A. Womack, Transportation Engineering Technician Senior, Department of Transportation, Division of Highways

EE 2019-06 Gary W. Mullins, District 1 Construction Engineer, Department of Transportation, Division of Highways

EE 2019-07 Stefan A. Zakaib, Assistant Director/Acting Director of the Right of Way Division, Department of Transportation, Division of Highways

EE 2019-08 Caryn Watson Short, Director, Legal Division, Public Service Commission

EE 2019-09 Jason Hamilton, District 1 Construction Area Engineer, Department of Transportation, Division of Highways

EE 2019-10 Russell L. Kees, Transportation Engineering Technologist, Construction Office Manager, Department of Transportation, Division of Highways

EE 2019-11 Ryan M. Canfield, Area Engineer, District 1 Construction, Department of Transportation, Division of Highways

EE 2019-12 Terry K. Logsdon, Transportation Engineering Technician Senior, Department of Transportation, Division of Highways

EE 2019-13 Toni L. Rogers, D-1 Resurfacing Coordinator, Department of Transportation, Division of Highways

EE 2019-14 Ryan M. Sims, General Counsel, Bureau for Medical Services

EE 2019-15 Joseph M. Pack, Highway Engineer, Department of Transportation, Division of Highways

EE 2019-16 Michael J. Folio, Attorney Supervisor, Real Property Unit, Legal Division, Department of Transportation, Division of Highways

EE 2019-17 David Ferrell, Highway Engineer Project Supervisor, Department of Transportation, Division of Highways

EE 2019-18 Marvin W. Carder, Jr., District 6 Construction, Area Supervisor, Department of Transportation, Division of Highways

EE 2019-19 Charles S. Swart, District 6 Design Engineer, Department of Transportation, Division of Highways

EE 2019-20 Adam Batty, Highway Engineer Associate, Department of Transportation, Division of Highways

EE 2019-21 Charles "Neal" Vance IV, Executive Director, Department of Transportation, Public Port Authority

EE 2019-22 Keith Loar, Area Construction Supervisor, Department of Transportation, Division of Highways

EE 2019-23 Lawrence E. Heater, Transportation Worker 3, Department of Transportation, Division of Highways

EE 2019-24 Erin K. Hunter, Acting Deputy Commissioner (temporary) and General Counsel, Offices of the Insurance Commissioner

EE 2019-25 Jonathan Clark, Assistant District Manager, Bridge Engineer, Department of Transportation, Division of Highways

EE 2019-26 Chris Preston, Highway Engineer – Environmental and Coatings Group Supervisor, Department of Transportation, Division of Highways

EE 2019-27 Jonathan L. Leatherman, Transportation Engineering Technician Senior, Department of Transportation, Division of Highways

EE 2019-28 Ryan Simonton, City Attorney, City of Morgantown

EE 2019-29 Michael R. Jones, Chemist 3 – Environmental and Coatings Section, Department of Transportation, Division of Highways

EE 2019-30 Matthew B. Vititoe, Transportation Engineer Technician, Department of Transportation, Division of Highways

EE 2019-31 Jeanne Phillips, Transportation Engineering Technician Associate (Finals Technician) D7 Construction, Department of Transportation, Division of Highways

EE 2019-32 Derrick Johnson, Highway Engineer Trainee-Project Engineer, Department of Transportation, Division of Highways

EE 2019-33 Ryan Satterfield, Incident & Mobility Management Coordinator, Department of Transportation, Division of Highways

EE 2019-34 Derek Giebell, Environmental Inspector, Division of Mining and Reclamation, Department of Environmental Protection

EE 2019-35 Hitham Hamdan, Highway Engineer, Department of Transportation, Division of Highways

EE 2019-36 Jason Green, Transportation Engineering Technologist, Utility Coordinator, Department of Transportation, Division of Highways

EE 2019-37 Michael A. Spolarich, Jr., Technical Analyst Associate, Department of Transportation, Division of Highways

EE 2019-38 Melissa S. Prince, Contract Development Manager, Department of Transportation, Division of Highways

EE 2019-39 Manoochehr K. Saidi, District 1 Traffic Engineer, Department of Transportation, Division of Highways

EE 2019-40 Derek Weichlein, Highway Engineer Associate, Department of Transportation, Division of Highways

EE 2019-41 David S. Cox, Transportation Engineering Technician, Department of Transportation, Division of Highways

EE 2019-42 Joshua A. Stewart, Transportation Engineering Technician-Trainee, Department of Transportation, Division of Highways

EE 2019-43 Patrick D. Gill, Survey Coordinator, Department of Transportation, Division of Highways

EE 2019-44 James Christopher Collins, Assistant District Engineer-Construction, Department of Transportation, Division of Highways

EE 2019-45 Michael Pumphrey, District 4 Design Engineer, Department of Transportation, Division of Highways

EE 2019-46 William A. Vance, District Inspector, Office of Miners' Health, Safety and Training

EE 2019-47 John E. Crane, State Asphalt Materials Engineer (Highway Engineer), Department of Transportation, Division of Highways

EE 2019-48 Patrick W. Conrad, Senior Engineering Technician, Department of Transportation, Division of Highways

EE 2019-49 Brandi M. Wiley, Transportation Engineering Technician, Department of Transportation, Division of Highways

EE 2019-50 Terry Burns, Transportation Engineering Technician Technologist, Department of Transportation, Division of Highways

EE 2019-51 Mary L. Hamrick, Highway Engineer Trainee, Department of Transportation, Division of Highways

EE 2019-52 Joseph Juszczak, District 6 Acting District Engineer, Department of Transportation, Division of Highways

EE 2019-53 Ryan Sengewalt, Highway Engineer Associate, Department of Transportation, Division of Highways,

EE 2019-54 David McGee, Project Supervisor, Department of Transportation, Division of Highways

EE 2019-55 Aaron C. Gillispie, State Highway Engineer, Department of Transportation, Division of Highways,

EE 2019-56 Edwin Clarkson, Technical Analyst, Gas Pipeline Commission, Public Service Commission

EE 2019-57 Michael S. Adkins, Regional Program Manager, Department of Transportation, Division of Highways

EE 2019-58 James T. Collins, Assistant District Engineer, Department of Transportation, Division of Highways

EE 2019-59 Joseph A. Pack, Transportation Engineering Technician-Senior, Department of Transportation, Division of Highways

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, ordered to reimburse the Commission for its costs of investigation and prosecution and/or ordered to undergo training on the Ethics Act. 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
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
2015	153	0	100	49	59	17

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

Public Hearings

No public hearings were held during 2019.

Conciliation Agreements

VCRB 2018-03: Jeff D. Davis, Commissioner, Hancock County

Davis owned Water World, a car wash which the Hancock County Commission paid $29,487.35 from January 10, 2013, through June 30, 2017, for washing county vehicles.

Davis attended County Commission meetings during which Water World's invoices were approved by a general vote to approve all invoices for payment. Davis did not physically remove himself from the meeting room or fully disclose his interests in the payments to Water World. He admitted that he violated the Ethics Act's prohibited contract and voting provisions. He also agreed to pay a $2,000 fine, a public reprimand and training on the Ethics Act.

Davis and the Hancock County Prosecuting Attorney's Office, through a Special Prosecutor, entered into the following agreement: "In exchange for the restitution/disgorgement of $29,487.35 representing the County's payments to Water World from January 10, 2013, through June 30, 2017, the State has agreed to not prosecute Mr. Davis for any alleged crime involving services provided through his car wash to the Sheriff."

VCRBs 2017-84 and 2018-65: Sonya Porter, Sheriff, Logan County

Porter's daughter applied to become a deputy sheriff. Pursuant to applicable civil service laws, the Logan County Deputy Sheriff's Civil Service Commission administered a written examination to the deputy sheriff candidates and created a master hiring list. Porter's Chief Deputy conducted the strength and agility test.

Porter participated as a member of the Sheriff's Department Interview Board in interviewing her daughter and other candidates, and Porter was present for part of the strength and agility test. Porter requested that the County Commission authorize her to hire three new deputies, including her daughter.

Porter admitted that she violated the Ethics Act, at W. Va. Code § 6B-2-5(b), and related Legislative Rule containing the anti-nepotism provisions, W. Va. R. § 158-6-3 (2017), through her involvement in hiring her daughter as a deputy sheriff. She admitted that nothing in the laws governing the hiring of deputies required her to be present for the physical agility testing, to participate in her daughter's interview or to appear before the County Commission to ask that it approve the hiring.

Porter admitted that she violated the Act and agreed to a public reprimand, to a fine in the amount of $5,000, to undergo training on the Ethics Act, and to not be involved in any decisions affecting the employment or working conditions of her daughter.

VCRB 2018-42: Jeff Neccuzi, Former Director of the Division of Immunization Services within the Office of Epidemiological and Prevention Services, Bureau for Public Health, Department of Health and Human Resources

Necuzzi was required to file annual Financial Disclosure Statements by the Ethics Act, at W. Va. Code § 6B-2-6(a)(3) and (e), while he held the title of Director of the Division of Immunization Services. He agreed that he was subject to this requirement but had not

been informed of it and was not otherwise aware of the requirement prior to the Complaint being filed against him.

The Ethics Commission and Necuzzi agreed to the imposition of no sanctions in this matter.

VCRB 2019-01: John D. Brown, Sergeant, Shepherd University Police Department

The Shepherd University Police Department has cruisers which its officers use during their work shift to patrol the University campus, and the University has a policy stating that its vehicles are to be used for official University business only. Brown admitted that, on approximately 20 occasions, he used his University cruiser to pick up his son at school thereby violating the private gain provision in the Ethics Act.

Brown admitted that he violated the Act and agreed to pay a fine in the amount of $300, to undergo training on the Ethics Act, and to reimburse the University in the amount of $146.06 for his personal use of the cruiser.

VCRB 2018-49: Mike Adams, Board Member, Preston County Public Service District #1

Adams' son was employed by the Preston County Public Service District ("PSD"). The PSD is governed by a three-member board and has only had four employees at any one time. Adams both participated in the deliberation and voted on three separate items affecting the employment and working conditions of his son; such votes did not fall under the Ethics Act's class exception which permits a public official to vote on matters affecting five or more similarly situated employees. Adams voted to approve an incentive pay policy proposal that benefitted PSD employees, including his son. Adams voted to raise the pay of three PSD employees, including his son. Adams voted to realign the duties of the former Chief Operator's job between two employees, one of which was his son.

Adams admitted that he violated the Ethics Act's voting provision at W. Va. Code § 6B-2-5(j)(1)(C). Adams agreed to a fine in the amount of $500, to a public reprimand and to undergo training on the West Virginia Governmental Ethics Act.

VCRB 2019-15: Joseph Yurish, Teacher/Head Football Coach, Hedgesville High School

In approximately 2017, a citizen donated sports equipment to the Hedgesville School Boosters' Club for it to use or sell for the benefit of sports teams at the high school. It was a condition of the donation that the Boosters' Club had to remove the equipment as soon as practicable from the donor's storage unit. In March 2018, several members of

the Boosters' Club and other volunteers moved the sports equipment from the donor's storage unit. The equipment was stored at the High School and other locations.

Yurish admits that a Spaulding portable basketball hoop was taken to his house. He further states that he put the basketball hoop in his driveway and used it. Yurish stated that, to the best of his knowledge, many Boosters' Club members knew that the portable basketball hoop was at his house.

Yurish stated that he intended to buy the basketball hoop from the Boosters' Club, but he admitted that he did not memorialize his intent in writing to anyone. In the spring of 2019, after the high school's Athletic Director inquired about the whereabouts of the donated equipment and directed that all the equipment be returned to the high school, Yurish returned the basketball hoop to the high school.

Yurish admitted that he violated the private gain provision in the Ethics Act. He agreed to pay a fine in the amount of $200, undergo training on the Ethics Act, and reimburse the Boosters' Club in the amount of $200 for his personal use of the basketball hoop.

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:

2019 -- 220
2018 – 204
2017 – 251
2016 – 173
2015 – 409

Lobbyist spending by calendar year:

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:

2019 – 3,017
2018 – 3,903
2017 – 2,880
2016 – 3,512
2015 – 2,388

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 1,874 employees and lobbyists in 2019.

Report issued January 2, 2020