

West Virginia Ethics Commission

2023 Annual Report



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

Table of Contents

Table of Contents	2
Duties of the Ethics Commission	3
Commission Members	3
Probable Cause Review Board Members	4
Staff	4
Budget	4
Informal Advice	5
Formal Opinions/Exemptions	5
Ethics Act Advisory Opinions (AO) 2023	6
Open Meetings Advisory Opinions (OMAO) 2023	14
Contract Exemptions (CE) 2023	15
School Board Advisory Opinions (SBAO) 2023	19
Property Exemptions (PE) 2023	19
Employment Exemptions (EE) 2023	20
Enforcement	24
Complaints	25
Staff-initiated Investigations	25
Public Hearings	26
Conciliation Agreements during 2023	27
Lobbyists	33
Active Registered Lobbyist by calendar year	34
Lobbyist spending by calendar year	34
Financial Disclosure Statements	34
Training – Public Servants and Lobbyists	34
New Legislation in 2023	35

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 2023 were:

Robert J. Wolfe, Chair Man, WV	Karen Disibbio Bluefield, WV	Terry Walker Kearneysville, WV
Joshua Cottle ¹ Culloden, WV	Robert Harman Keyser, WV	
Lynn Davis Wellsburg, WV	Suzan Singleton Moundsville, WV	

¹ appointed effective April 5, 2023

The Commission has two vacancies.

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(b). Members serving in 2023 were:

Michael A. Kawash, Chair Charleston, WV	Daniel J. Guida Weirton, WV
--	--------------------------------

The Probable Cause Review Board has one vacancy.

Staff

The staff of the Ethics Commission consists of the Executive Director, General Counsel, two Staff Attorneys, and two Administrative Assistants:

Kimberly B. Weber Executive Director	Teri Anderson ² Lobbyist Registrar
Theresa M. Kirk General Counsel	M. Ellen Briggs Executive Assistant
Andrew R. Herrick Staff Attorney	Rachel Y. Carpenter ³ Lobbyist Registrar
John E. Roush Staff Attorney	

Budget

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

2023-2024	\$ 753,099.00
2022-2023	\$ 737,544.00
2021-2022	\$ 719,844.00
2020-2021	\$ 719,844.00
2019-2020	\$ 719,844.00

² resigned effective January 27, 2023

³ started employment February 27, 2023

Informal Advice

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

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

2023	642
2022	610
2021	503
2020	451
2019	391

The following is a summary of the number of responses by the Commission to requests for oral advice, usually over the telephone, during the past five years:

2023	2,072
2022*	2,293
2021	1,102
2020	1,225
2019	1,496

*In 2022, the annual report began including oral advice given by all staff members, not just attorneys.

Formal Opinions/Exemptions

The Ethics Commission issues formal Advisory Opinions which respond to questions relating to the application of the Ethics Act. The Commission also issues Opinions regarding W. Va. Code § 61-10-15 (to county officials relating to county officials' interests in contracts) and regarding W. Va. Code § 18-5-1a (to county board of education members, members-elect, and candidates for election to boards regarding whether they may hold certain other public positions and serve on a county board).

In addition, two of the Commission's Committees are authorized to issue Advisory Opinions. The Committee on Open Governmental Meetings issues Advisory Opinions which interpret the Open Governmental Meetings Act. The Committee on Standards of

Conduct for State Administrative Law Judges issues Advisory Opinions regarding the Code of Conduct for Administrative Law Judges.

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

Subject Matter	2019	2020	2021	2022	2023
Ethics (and W. Va. Code § 61-10-15)	28	13	23	20	13
Open Meetings	4	0	1	2	1
ALJ Code of Conduct	1	0	0	0	0
Contract Exemptions	4	7	2	4	5
Employment Exemptions	57	28	26	67	93
Property Exemptions	0	0	0	0	0
School Board	0	0	0	2	0
TOTAL:	94	48	52	95	112

Ethics Act Advisory Opinions (AO) 2023

Advisory Opinion 2023-01 Sheriff

Categories: Employment

A **Sheriff** asked whether he may be privately employed as a security officer during his off-duty hours to provide security services in the same county in which he is Sheriff.

The Requester states that his office hours as Sheriff are from 7:30 a.m. to 4:30 p.m. on weekdays and that he would only perform the private security work during his off-duty hours. The Requester also states that he would be paid \$100 per hour by the private companies as an independent contractor. If an incident would arise that requires official law enforcement action while the Requester is performing security services, the Requester states that he would immediately shift from performing private security duties to performing his law enforcement duties as a sheriff. He would not be compensated by the private company once he began his duties as a sheriff.

Under W. Va. Code § 6B-2-5(h)(1), a full-time public official, such as a sheriff, may not “seek employment with [or] be employed by” certain persons. These persons include, among others, those who “[h]ad a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months” or “[h]as a

matter before the agency on which he or she is working or a subordinate is known by him or her to be working.” Performing services as an independent contractor is considered employment for purposes of this restriction. W. Va. Code § 6B-2-5(h)(2).

In Advisory Opinion 2019-28, a sheriff asked whether he may continue to operate a residential real estate leasing business. The Ethics Commission found that “[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.” The restrictions in W. Va. Code § 6B-2-5(h)(1) and (2) are the same for employment and property transactions, so the Commission applied the same analysis, holding that the Sheriff may provide security services to private businesses in the county where he is sheriff because a sheriff does not regulate or have ongoing matters before his or her department with all county residents and taxpayers by merely providing routine police services or by performing the ministerial functions of collecting taxes which are not delinquent. The Sheriff may not, however, perform security services for private businesses that have been the subject of a regulatory matter within the last 12 months or currently have a matter before the Sheriff’s Department.

The Commission also held that W. Va. Code § 6B-2-5(h)(6) does not prohibit the Requester from being employed by private individuals and businesses to provide private security services within his County because his official job duties as Sheriff do not include providing private security services.

Advisory Opinion 2023-02 Housing Authority Executive Director

Categories: Employment, Double Dipping

A Regional **Housing Authority Executive Director** asked whether she may accept a stipend from a Home Loan Bank for serving on its Affordable Housing Advisory Council.

The Requester asserts that the Bank does not currently have a matter before the Housing Authority, and that neither she nor her subordinates has ever taken any regulatory action against the Bank. The Bank provides no regular operating funds or loans to the Housing Authority. The Housing Authority, however, may apply for grant funds in the future from the Bank.

The Commission held that W. Va. Code § 6B-2-5(h)(1) and (6) do not prohibit the Requester from accepting the stipend and payment of travel expenses from the Bank for her service on its Affordable Housing Advisory Council, except during time periods when the Housing Authority is applying for or administering a grant from the Bank.

When the Housing Authority is applying for or administering a grant from the Bank, the Requester may, however, accept the full amount of the stipend from the Bank and donate it to the Housing Authority; accept reimbursement of her travel expenses because the Housing Authority benefits from her attendance at the meetings; and

remain on the clock with the Housing Authority (without having to take annual leave). To avoid double dipping, at no time may the Requester accept both the stipend and her salary without taking annual leave.

Advisory Opinion 2023-03 State Employee

Categories: Private Gain

A **State Employee** asked whether he may seek election to the state office that regulates elections while being employed by that same office.

The Requester is a high-ranking state employee. The head of the state agency is an elected official who is not seeking reelection to that position. The Requester wishes to seek election to the position currently held by his boss but wants to know whether he must resign his employment before running for that office.

The Requester's state agency regulates elections in the State of West Virginia. The Requester states that he will not, in his official capacity, be involved in any matters that uniquely affect his or an opponent's election campaign. The Requester further states that, if elected, he will resign his employment position with the state agency before being sworn into office. The Requester also asks for guidance on other restrictions in the Ethics Act that apply if he becomes a candidate.

The Ethics Commission has held that the Ethics Act does not prohibit a state employee from becoming a candidate for public office. Furthermore, the Ethics Act does not bar public officials or public employees from engaging in political activities but only prohibits them from using public resources for their campaigns.

In reviewing the language of the Ethics Act, the Ethics Commission found no provision that prohibits a state agency employee from becoming a candidate for statewide public office even if the employee's state agency regulates elections. Further, there is no provision in the Ethics Act requiring a state employee to terminate his or her state employment while being a candidate for public office.

As a result, the Ethics Commission held that a state employee may seek election to the state office that regulates elections while being employed by that same office. The state employee may not be involved in matters uniquely affecting his campaign or his opponents' campaigns.

Advisory Opinion 2023-04 County Commission

Categories: Nepotism; W. Va. Code § 61-10-15 County Officers (Criminal Provision); Voting and Recusal

A **County Commission** asked whether a County Commissioner's spouse may be employed by the County Ambulance Service as a licensed emergency medical technician or paramedic.

The Requester states that the Ambulance Service is having difficulty filling part-time and full-time emergency medical technician ("EMT") and paramedic positions and that there is an urgent need to fill these positions. A Commissioner's spouse is a licensed EMT and paramedic and is willing to apply for and fill one of the vacant positions. Generally, county officials may not have a pecuniary interest in any public contract over which they may have direct authority or any voice, influence or control, and the spouses of county commissioners may not be employed by the county commission or county agencies. W. Va. Code §§ 6B-2-5(d) and 61-10-15(a). However, W. Va. Code § 61-10-15(k) specifically permits the employment of a spouse of a county official as a licensed medical provider for government-owned hospitals or other government agencies who provide health care services.

The state of West Virginia licenses emergency medical technicians and paramedics, and the ambulance authority is a medical provider. Accordingly, the Commission held that pursuant to W. Va. Code § 61-10-15(k) and the Ethics Act a county commissioner's spouse may be employed as a licensed EMT or paramedic by a county ambulance authority. The county commissioner must comply with the nepotism rules, recuse himself or herself on matters affecting his or her spouse's employment, supervision, and working conditions, and may not serve on the ambulance service board or vote on appointments to that board pursuant to W. Va. Code § 61-10-15(k), W. Va. Code § 6B-2-5(j), and W. Va. Code R. § 158-6-3 (2022).

Advisory Opinion 2023-05 State Agency Compliance Officer

Categories: Private Gain

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

The State Agency has a statutory duty to market and sell a product. The State Agency markets its product in various ways, including purchasing advertising and sponsorships for cultural and sporting events.

At times, the State Agency receives an allotted number of tickets to an event it sponsors pursuant to the terms of the advertising or sponsorship contract. The tickets are not a gift from the seller but a thing of value provided to public and private sector entities as legal consideration for the advertising or sponsorship contract. For example, the State Agency may sponsor a hospitality tent at an event, and the contract terms require the event holder to provide event tickets to its sponsors, including the State Agency.

The State Agency normally has its employees work at the events that it sponsors and uses some of the tickets provided under the sponsorship contracts for its employees and officials to attend the event to perform job-related duties. For example, if the State Agency has a hospitality tent, then the State Agency requires some of its employees and officials to be present at the tent to interact with customers. The employees and officials working the event wear apparel with the Agency logo.

The Ethics Commission held that the general rule is that the tickets become the property of the agency and must be used for a public purpose. It further held that the State Agency may use the event tickets for its own public officials or public employees, or public officials or public employees from other agencies, to work at sponsored events. A public employer may not gratuitously give event tickets or other public resources to its employees or other persons who are not lawfully entitled to them. The Opinion also discusses rules governing the use of tickets under the Ethics Commission's employee recognition guidelines and generally discusses legal principles governing whether it is permissible to provide an extra ticket to a public official or public employee so he or she may bring a guest.

Advisory Opinion 2023-06 State Agency Director

Categories: Employment

A **State Agency director** asked whether he may continue being employed as an attorney by a private law firm in an of counsel position.

The Requester is an attorney who is employed by a private law firm in a part-time, of counsel position. He has recently been hired by the state of West Virginia as the full-time director of a state agency, and may be hired shortly to be the executive director of a related state agency. His director position is with an agency that is responsible for creating energy policies, and he reports to a state department secretary. The Executive director position would be with an agency that is responsible for promoting and overseeing the development of energy facilities and projects, and he would report to an appointed board in that position.

The Requester stated that his law firm employer does not currently have any matters, either directly or through the representation of its clients, before either agency.

The Ethics Act restricts full-time public employees and public officials from having other employment in certain circumstances. Specifically, W. Va. Code § 6B-2-5(h)(1), provides that full-time public officials and employees may not seek employment with or be employed by those persons who have had a matter on which the public official or public employee, or a subordinate, is known to have taken regulatory action within the preceding 12 months. W. Va. Code § 6B-2-5(h)(1)(A). These persons also include those who currently have a matter before the agency on which the public official or public employee is working, or a subordinate is known by the employee to be working.

W. Va. Code § 6B-2-5(h)(1)(B). The Requester is subject to the restrictions in “h” because he is a full-time public employee or public official.

The Ethics Commission held that a state agency director may continue his part-time, of-counsel employment with a private law firm unless the law firm has matters before the state agency on which he or any of his state agency subordinates is working. The Opinion also held that if the law firm is representing a client before the state agency, then the law firm has a matter before the agency for purposes of the restrictions in W. Va. Code § 6B-2-5(h).

Advisory Opinion 2023-07 County School Superintendent

Categories: Gifts and Endorsements

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

From September 2022 through May 2023, eighteen West Virginia counties, including the Requester’s county, participated in a statewide electric school bus pilot program (“pilot program”) commissioned by the Governor. A private international company (“Manufacturer”) designs, builds, and distributes electric medium and heavy-duty vehicles, including school buses. For the pilot program, the Manufacturer gave each participating county an electric school bus to use for 30 days, the equivalent of approximately six school weeks.

After the Requester’s county participated in the pilot program, the county board of education purchased an electric school bus made by the Manufacturer from a dealership in West Virginia. The Requester’s county also sends students to job shadow at a plant the Manufacturer opened in the Requester’s county in September 2022.

In July 2023, the Manufacturer is hosting a conference in Reno, Nevada. The Manufacturer has invited individuals involved in West Virginia’s pilot program to participate in the conference. The Requester was specifically asked to be a panel participant for a session on electric buses. The Requester will also attend other conference sessions.

The Requester states that attending the conference will enable him to gather information from other sources to help him and the board of education assess, from an economic and operational standpoint, whether the county should purchase additional electric school buses. He also states that his attendance at other conference sessions will increase his general knowledge about school transportation. The Requester states that conference attendees will include individuals from around the country who have a wealth of knowledge about the school transportation industry, including specific issues facing his county and the rest of West Virginia. For example, the challenges of operating electric buses in mountainous areas and during cold weather.

The Ethics Commission found that because the Requester's county purchased one of the Manufacturer's electric buses from a West Virginia dealership, the Manufacturer is an interested person for purposes of the gift restrictions in the Ethics Act. The Ethics Act expressly allows public officials, however, to accept from interested parties "[r]easonable expenses for food, travel and lodging [for] the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement...." W. Va. Code § 6B-2-5(c)(2)(D); see also W. Va. Code R. § 158-6-5 (2022).

The Ethics Commission held that the Manufacturer may pay for the Requester's reasonable food, lodging, and travel expenses related to the Requester's service as a panel speaker at the Manufacturer's conference.

The Ethics Act also prohibits public servants from making commercial endorsements. The Requester does not intend to expressly endorse the Manufacturer's buses. As a panel member, he will discuss his county's experiences using the Manufacturer's electric buses and other panel members will discuss their experiences. The Ethics Commission found that the Respondent's service as a panelist at a conference hosted by the Manufacturer of a product used by the Respondent's agency does not constitute a prohibited endorsement so long as the Respondent does not expressly endorse the Manufacturer's product.

The Requester does not have to use professional leave to travel to and attend the conference if the County Board of Education determines that the Requester's attendance at the conference will provide an overriding public benefit to the County Board of Education. This holding is consistent with [Advisory Opinion 2023-02](#).

[Advisory Opinion 2023-08](#) City Sanitary Board

Categories: Private Gain and Prohibited Contracts

A **City Sanitary Board** asked whether it may allow an employee and his parents to participate in the Board's Biosolids Program and whether it may upgrade a biosolids storage area on the employee's parents' property.

The Ethics Commission found that the Sanitary Board employee may participate in the Biosolids Program, be a party to a Biosolids Landowner Agreement, and receive lime and gravel for his property from the Sanitary Board under the same terms and conditions as other Biosolids Program participants.

The Ethics Commission found that the Sanitary Board employee's parents may participate in the Sanitary Board's Biosolids Program.

Based on the Ethics Act and prior Advisory Opinions, the Ethics Commission held that the Sanitary Board may use public funds to improve private property owned by the

parents of a Sanitary Board employee if the Sanitary Board determines that there is an overriding public benefit to the Sanitary Board.

[Advisory Opinion 2023-09](#) **State Employee**

Categories: Employment and Voting

A **State Community and Technical College employee** asked whether he may serve in the West Virginia Legislature while being employed by the College as a professor.

The Ethics Commission held that a state community and technical college employee may serve as an elected member of the West Virginia Legislature subject to the other restrictions in the Act. See also Article 6, Section 13, of the West Virginia Constitution.

The Ethics Commission held that the Ethics Act does not require the Requester to recuse himself from voting on legislation or appropriations that benefit his college employer. To the extent that Advisory Opinions 2012-19 and 2012-23, which adopted these restrictions, conflict with the Ethics Commission's holding, this Opinion controls.

[Advisory Opinion 2023-10](#) **City Director**

Categories: Gifts and Solicitations

A **Director of a City Arts and Cultural Development Department** asked whether City officials and employees may solicit donations via GoFundMe or similar crowdsourced funding for a public concert series and other events held at the City's outdoor amphitheater.

The Commission held that the outdoor concert series and similar events at the City's amphitheater serve a charitable purpose under the Ethics Act, and, therefore, City officials and employees may solicit donations for these events via GoFundMe or similar crowdsourced funding. The City officials and employees must comply with the manner of solicitation limitations found in W. Va. Code R. §§ 158-7-6 and 158-7-7 when they solicit these donations. The City stated that it may use crowdfunding, such as a GoFundMe drive, to solicit and accept donations. The City should seek advice from its accountant or the Auditor's Office regarding applicable rules governing the receipt of electronic donations by government agencies through these types of computer applications.

[Advisory Opinion 2023-11](#) **Prosecuting Attorney**

Categories: Prohibited Contracts, Employment, and W. Va. Code § 61-10-15 County Officers (Criminal Provision)

A **Prosecuting Attorney** asked whether she may employ spouses as assistant prosecuting attorneys.

The Ethics Act does not prohibit spouses from working in the prosecutor's office as assistant prosecutors as long as the Act's nepotism provision and the applicable Legislative Rule are followed.

The Ethics Commission held that assistant prosecuting attorneys do not per se have any voice, influence, or control over the employment contracts of the other assistant prosecutors in the prosecutor's office. Therefore, W. Va. Code § 61-10-15 does not prohibit the Requester from employing spouses to work as assistant prosecutors in the prosecutor's office as long as the applicable Legislative Rule on nepotism is followed.

Advisory Opinion 2023-12 County Commission candidate

Categories: Prohibited Contracts, Employment, and W. Va. Code § 61-10-15 County Officers (Criminal Provision)

A **County Commission candidate** asked whether he may continue his employment with a nonprofit that receives appropriations from the County if he becomes a County Commissioner.

The Ethics Commission held that a county commission's appropriation to a nonprofit agency constituting less than seven percent of the nonprofit's fiscal year revenues does not constitute the exercise of voice, influence, or control pursuant to W. Va. Code § 61-10-15. The Ethics Commission further held that the appropriations to the nonprofit from the county commission may not be used to directly fund the county commissioner's employment position with the nonprofit.

The Ethics Commission finally held that the County Commission's past contributions, even if they had been seven percent or more of the Nonprofit's revenues, will not be considered for purposes of W. Va. Code § 61-10-15 if the Requester now becomes a County Commissioner and remains employed by the Nonprofit because they predate his appointment to public office.

Open Meetings Advisory Opinions (OMAO) 2023

Open Meetings Advisory Opinion 2023-01 City of Morgantown

The **City of Morgantown** asked whether governing bodies, including boards and commissions, may hold a public meeting by telephone conference or other electronic means without providing a physical meeting space for the public to attend.

The Open Governmental Proceedings Act (“Open Meetings Act” or “Act”) was enacted in 1975.⁴ In 1999, the Legislature added a provision to the Act which states: “Meetings may be held by telephone conference or other electronic means.”⁵ W. Va. Code § 6-9A-2(5). The Act does not require in-person attendance by members of the governing body at a meeting. Hence, the Open Meetings Act expressly allows members of a governing body to conduct a public meeting by telephone or other electronic means. As the Open Meetings Act clearly allows governing bodies to hold a public meeting by telephone conference or electronic means, the only question this Committee must answer is whether a governing body must also provide a physical meeting space for members of the public.

The Open Meetings Act states: “Except as expressly and specifically otherwise provided by law . . . all meetings of any governing body shall be open to the public.” W. Va. Code § 6-9A-3. The Committee must determine whether, in the absence of a public health emergency, governing bodies must have a physical meeting space and allow citizens to attend a meeting in person to make a meeting “open” for purposes of the Act.

The Open Meetings Act states that meetings shall be open, but the Act does not define “open.” An accepted meaning of open is “not restricted to a particular group or category of participants.”⁶ The Committee finds that the term “open meeting” does not mean an open physical meeting space but means that access to a meeting is not restricted to a particular group to the exclusion of others. The Committee found that the requirement that a meeting be open does not mean that a governing body must provide a physical meeting space.

Contract Exemptions (CE) 2023

The Ethics Act prohibits public officials and 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 2023 in the following matters:

Contract Exemption 2023-01 Preston County Economic Development Authority

The **Preston County EDA** asked for a Contract Exemption to buy signs for its new office from Affordable Signs Unlimited LLC, a business owned by Beth Stone, the spouse of Chris Stone, an Economic Development Authority board member.

⁴ 1975 W. Va. Acts c. 177

⁵ 1999 W. Va. Acts c. 208

⁶ “Open.” Merriam-Webster.com Dictionary,

Merriam-Webster, <https://www.merriam-webster.com/dictionary/open>. Accessed 26 Jan. 2023.

The Preston County Chamber of Commerce ("Chamber") is a lessee in the new building and it prefers to support Chamber members. There are only two sign companies that are members of the Chamber. The first is Affordable Signs Unlimited LLC ("Affordable Signs"), the only sign business located in Preston County. The other sign company is Direct Results DSP, Inc., ("Direct Results"), a company located in Waynesburg, Pennsylvania. The EDA tries to support local businesses whenever possible and would prefer to do business with a Preston County, West Virginia, business rather than a Pennsylvania business if possible.

The Requester recognized that the EDA may not be permitted to contract with a company owned by an EDA member's spouse, per W. Va. Code § 61-10-15(a). Therefore, the EDA first contacted Direct Results for a quote for signs. The EDA sought advice and assistance from Direct Results to determine the sizes and types of signs to choose at an affordable cost. Direct Results submitted a bid proposed to the EDA of \$23,333 for the signage.

Due to the excessive price of the quote, the EDA placed an advertisement for requests for proposals using the same specifications provided by Direct Results in the two Preston County local newspapers. The Requester received no responses to the request for proposals.

Next, the Requester directly contacted Affordable Signs to seek a quote. Affordable Signs is owned by Beth Stone, the spouse of EDA member Chris Stone. Affordable Signs suggested less expensive signs with fewer features and submitted a written quote in the amount of \$3,250. The Requester determined that the signs offered by Affordable Signs met the EDA's needs and that some of the features of the signs offered by Direct Results were unnecessary.

Finally, the Requester went back to Direct Results and asked for a new quote based on the sign specifications given by Affordable Signs. The new quote from Direct Results is in the amount of \$2,700.

The Requester recognizes that, in the end, Direct Results' quote is \$550 less than Affordable Signs' quote. The EDA asserts, however, that it would still prefer to use Affordable Signs because it is a local company. The EDA also questions the practices of Direct Results since it was able to reduce its cost by roughly \$20,000 by making a few simple changes. The EDA also has some concerns that this company might come back with increased costs after an agreement is signed due to "unforeseen circumstances." The EDA sought advice and assistance from Direct Results to determine the sizes and types of signs to choose at an affordable cost. The EDA is not pleased with the guidance and advice given by Direct Results.

The Ethics Commission may only grant a contract exemption from the prohibitions in W. Va. Code § 61-10-15(a) if the prohibition results in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency.

Here, the EDA asserts that it prefers to use a local West Virginia business and questions the practices of the out-of-state business, as discussed above. However, the bid proposal from Direct Results DSP, Inc., is \$2,700, and the bid from Affordable Signs is \$3,250. Affordable Signs is not the lowest bidder. The Commission has not granted a past contract exemption on these grounds. The Commission finds that the Requester has not met its burden of showing that excessive cost, undue hardship, or other substantial interference with the operation the EDA would result if the EDA awards the contract to Direct Results. Therefore, the Ethics Commission denied the Preston County Development Authority's request for a Contract Exemption.

Contract Exemption 2023-02 Monroe County Commission

The **Monroe County Commission** sought a Contract Exemption to purchase fuel for county vehicles from Main Street Exxon, a business owned by County Commissioner Kevin Galford.

Historically the County used various fuel vendors throughout the County on a rotating basis. At times, however, County officials or employees ("employees") need to refuel vehicles in Union, West Virginia, where the County offices are located and the majority of its vehicles are kept. In the past, when vehicles needed to be refueled in Union, employees used a fuel station that was located in Union but closed in December 2022. The only other fuel station in Union is the Main Street Exxon ("Exxon"), which is owned by County Commissioner Kevin Galford. Since the other fuel station closed in December 2022, the County has been taking its vehicles that need refueling at or near Union to a Citgo Station in Pickaway, West Virginia, which is an 8.2 mile round trip from Union. The Exxon is only 486 feet from the Courthouse in Union.

The Requester states that the most likely circumstance requiring a county employee to buy fuel at the Exxon would be when a vehicle needs refueled before leaving Union. The Requester states that if the exemption is granted, it would continue its practice of using fuel vendors on a rotating basis throughout the County for vehicles that do not need to be refueled in Union. The Requester states that it averages \$744 per week (\$38,688 per year) in fuel costs for all of its vehicles. The Requester states that traveling to Pickaway to purchase fuel for vehicles at times results in excessive cost and undue hardship. Specifically, the Requester states that the additional travel exposes employees to heightened traffic accident vulnerability and increases the County's fuel and vehicle maintenance expenses. Finally, the Requester states that it would not use the Exxon for vehicle maintenance. There is a maintenance garage near Union that does maintenance work on the County vehicles.

The Ethics Commission determined that a contract exemption would be required in order for the County to purchase fuel from Commissioner Galford's Exxon station. The Ethics Commission may only grant a contract exemption from the prohibitions in W. Va. Code § 6B-2-5(d) and W. Va. Code § 61-10-15(a) if the prohibition results in excessive

cost, undue hardship or other substantial interference with the operation of a governmental body or agency.

Although the Requester's round trip travel is considerably less than the travel in the previously cited Contract Exemptions, in this instance there will be emergency and law enforcement vehicles that need refueling in Union before they can be driven safely out of Union. The Ethics Commission found that it would create an undue hardship on the County to bar it from purchasing fuel for these vehicles at the only gas station located in Union, particularly when there are harsh weather conditions or other unforeseen circumstances. Hence, the Commission found that prohibiting the County from purchasing fuel for emergency and law enforcement vehicles at the Exxon would also cause substantial interference with governmental operations.

Therefore, the Ethics Commission held that the Monroe County Commission may contract with Main Street Exxon for fuel purchases with certain limitations.

Contract Exemption 2023-03 Mercer County Community Corrections Day Report Center

The **Mercer County Community Corrections Day Report Center** sought a Contract Exemption to contract with David Wayne Bailey and James "Jim" Arnold Baker, two Board members, to serve as co-interim Executive Directors.

The Mercer County Community Corrections Day Report Center provides alternative sentencing options for non-violent state criminal offenders. The Mercer County Commission appoints the Board members of the Day Report Center. The Board hires an Executive Director who directs the Day Report Center's day-to-day and long-term operations. For example, the Executive Director manages the Day Report Center's budgets, interviews program participants, supervises professional case managers and the operation of specialized court-order programs for ADC participants, and serves as the liaison between the Day Report Center and other governmental entities involved in the alternative sentencing process.

On April 11, 2023, the Day Report Center Board terminated its Executive Director. The Board has posted advertisements for the Executive Director position on various media outlets, and it is currently seeking applicants for the position. However, the Board has been unable to fill the position of Executive Director on an interim or permanent basis since the termination of the former Executive Director.

David Wayne Bailey and James "Jim" Arnold Baker are two long-serving members of the Board. Due to the inability to hire either an interim or permanent Executive Director, Mr. Bailey and Mr. Baker have been serving as co-interim Directors without compensation since the termination of the former Executive Director. The Board is, therefore, requesting a Contract Exemption to compensate Mr. Bailey and Mr. Baker at

the rate of \$19.00 per hour each until a full-time Executive Director can be hired on a permanent basis. The Requester asserts that Mr. Bailey and Mr. Baker did not participate in the Board's decision to hire them on an interim basis or pay them \$19 per hour.

Here, to comply with § 61-10-15, it is necessary for the Requester to obtain a Contract Exemption in order to contract with two Board members to serve as co-interim Executive Directors of the Day Report Center. [Advisory Opinion 2012-12](#) and [Advisory Opinion 2017-02](#).

Many of the Executive Director position's job duties are integral to the Day Report Center's day-to-day and long-term operations, including overseeing case managers, managing the Day Report Center's budgets, interviewing program participants, and fulfilling the Day Report Center's programs' needs. At this time, there are no known, qualified individuals within the Day Report Center who can serve as the Executive Director. Without an interim Executive Director, the Day Report Center's ability to provide core services to individuals and adult drug court participants will be greatly diminished.

The Ethics Commission grants a Contract Exemption to the Mercer County Day Community Corrections Report Center to contract with David Bailey and Jim Baker at the rate of \$19 per hour each for performing the functions of co-interim Executive Directors, with limitations.

School Board Advisory Opinions (SBAO) 2023

The Ethics Commission is authorized to issue written Advisory Opinions to County Board of Education members, members-elect, and candidates for election to the Board as to whether they may hold certain other public positions and also serve on a County Board under W. Va. Code § 18-5-1a. The Commission received no School Board Advisory Opinion requests in 2023.

Property Exemptions (PE) 2023

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 received no Property Exemption requests in 2023.

Employment Exemptions (EE) 2023

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

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

The following Employment Exemptions were requested and granted during 2023:

- EE 2023-01** Jeremiah K. Knavenshue, Transportation Highway Engineer, Department of Transportation, Division of Highways
- EE 2023-02** Darrin A. Holmes, Highway Engineer Associate, Department of Transportation, Division of Highways
- EE 2023-03** Christopher M. Miller, Highway Realty Manager, Department of Transportation, Division of Highways
- EE 2023-04** Jack W. Wroten, Highway Realty Manager II, Department of Transportation, Division of Highways
- EE 2023-05** Lauren E. Owens, Transportation Engineer Trainee I, Department of Transportation, Division of Highways
- EE 2023-06** Adam C. Crites, Transportation Engineer Technician-Senior, Department of Transportation, Division of Highways
- EE 2023-07** Stephen A. Sites, Transportation Environmental Program Manager II, Department of Transportation, Division of Highways
- EE 2023-08** Matthew A. Mongold, Highway Engineer Trainee, Department of Transportation, Division of Highways
- EE 2023-09** Donna J. Hardy, Assistant Director, Safety Advancement Traffic Engineer, Department of Transportation, Division of Highways
- EE 2023-10** Vincent Allison, Pavement Analysis and Evaluation Section Supervisor, Department of Transportation, Division of Highways
- EE 2023-11** Russel Coakley, Transportation Engineering Technician Associate, Department of Transportation, Division of Highways
- EE 2023-12** Lovell R. Facemire, Transportation Engineer, Department of Transportation, Division of Highways
- EE 2023-13** Scott P. Boyd, Transportation Engineering Technician, Department of Transportation, Division of Highways
- EE 2023-14** James A. Rossi, Highway District Engineer/Manager, Department of Transportation, Division of Highways
- EE 2023-15** Mohammed A. Khan, Highway Engineer Senior, Assistant Director – Program Delivery, Department of Transportation, Division of Highways

- EE 2023-16** Gregory L. Bailey, Interim State Highway Engineer/Chief Engineer Operations, Department of Transportation, Division of Highways
- EE 2023-17** Anthony E. Clark, District Engineer, Department of Transportation, Division of Highways
- EE 2023-18** Adam J. Holliday, Highway Engineer Trainee II, Department of Transportation, Division of Highways
- EE 2023-19** Richard J. Diesenber, Transportation Engineer Associate, Department of Transportation, Division of Highways
- EE 2023-20** Brian T. White, Construction Inspector, Department of Transportation, Division of Highways
- EE 2023-21** Dr. Keith R. Burdette, Superintendent of Schools, Mason County
- EE 2023-22** Steven R. Holmes, Construction Project Supervisor, Department of Transportation, Division of Highways
- EE 2023-23** Marvin W. Carder, Jr., Construction Area Supervisor, HTRETCH, Department of Transportation, Division of Highways
- EE 2023-24** Keith B. Woodruff, Highway Transportation Engineering Technician (HTRET), Department of Transportation, Division of Highways
- EE 2023-25** Scott H. Billings, Transportation Engineering Technician, Department of Transportation, Division of Highways
- EE 2023-26** Kimberly L. Stitzinger, Assistant Attorney General, Attorney General's Office
- EE 2023-27** Michael S. Stanislawczyk, District Five Construction Office Manager, Department of Transportation, Division of Highways
- EE 2023-28** Paul M. Farley, Highway Engineer, Department of Transportation, Division of Highways
- EE 2023-29** Jaime T. Adkins, Transportation Civil Rights Compliance Specialist Senior, Department of Transportation, Division of Highways
- EE 2023-30** Kaleb Mitchell Owsley, Transportation Engineering Technician Associate, Department of Transportation, Division of Highways
- EE 2023-31** Michael R. Jones, Chemist 3, Environmental and Coatings Section, Department of Transportation, Division of Highways
- EE 2023-32** Tyler Phipps, Transportation Division Manager 1, Materials Control, Soils and Testing Division, Department of Transportation, Division of Highways
- EE 2023-33** Richard Chase Aliff, Area Engineer/TRETCNO, Department of Transportation, Division of Highways
- EE 2023-34** Lisa W. Hunter, Hearing Examiner, Workers' Compensation Board of Review
- EE 2023-35** Joshua D. Howell, Construction Engineer (D-10), Department of Transportation, Division of Highways
- EE 2023-36** Brian Martino, Tax and Revenue Auditor III, State Tax Department – Auditing Division
- EE 2023-37** Amber Foster, Resurfacing Office Manager, Department of Transportation, Division of Highways
- EE 2023-38** Joshua D. Spence, Chief Information Officer, West Virginia Office of Technology

- EE 2023-39** Adam Layne, Transportation Engineering Technician LV III, Department of Transportation, Division of Highways
- EE 2023-40** Kelly A. Chapman, Regional Materials Control Coordinator, Department of Transportation, Division of Highways
- EE 2023-41** Devin M. Piraino, Transportation Engineering Technician – Senior, Materials Office Coordinator, Department of Transportation, Division of Highways
- EE 2023-42** Sarah Leigh Runyon, Assistant Director (Transportation Engineer Senior), Department of Transportation, Division of Highways
- EE 2023-43** Chris K. Williams, Transportation Engineering Analyst – Traffic Signal Designer, Department of Transportation, Division of Highways
- EE 2023-44** Ryan M. Canfield, District 1 Area Construction Engineer (Acting D1 Construction Engineer), Department of Transportation, Division of Highways
- EE 2023-45** Matthew J. Miller, District Surface Inspector, Office of Miners’ Health, Safety, and Training
- EE 2023-46** Deanna Winn, District 1 Evaluation Engineer, Department of Transportation, Division of Highways
- EE 2023-47** Andrew S. Mays, Transportation Engineer Trainee II, Department of Transportation, Division of Highways
- EE 2023-48** Kelly P. Blair, District Surface Inspector, Office of Miners’ Health, Safety, and Training
- EE 2023-49** Tayler Thompson, Transportation Engineer, Department of Transportation, Division of Highways
- EE 2023-50** Carrie L. Pugh, Transportation Appraiser Senior, Department of Transportation, Division of Highways
- EE 2023-51** Tommy Edens, Traffic Signal Designer, Department of Transportation, Division of Highways
- EE 2023-52** Larry Shea, Highway Engineer Senior, Department of Transportation, Division of Highways
- EE 2023-53** Christopher J. Kinsey, Deputy Business Manager – Programs, Department of Transportation
- EE 2023-54** Gulipiye Abudukadier, Assistant Contract Analytics Coordinator, Department of Transportation, Division of Highways
- EE 2023-55** Steven G. Schumacher, District 8, Construction Engineer, Department of Transportation, Division of Highways
- EE 2023-56** William R. Murray, Transportation Engineer, Department of Transportation, Division of Highways
- EE 2023-57** Gary C. Kessell, Division Manager 2, Department of Transportation, Division of Highways
- EE 2023-58** Josh Holley, Highway Engineer Associate, Department of Transportation, Division of Highways
- EE 2023-59** Brandi Krofcheck, ATMS and Field Devices Manager, Department of Transportation, Division of Highways

- EE 2023-60** Christopher B. Fields, HTRTEN3, Department of Transportation, Division of Highways
- EE 2023-61** Russell L. Kees, Assistant Director, Contract Administration, Department of Transportation, Division of Highways
- EE 2023-62** Christian T. Holstein, Nosology and HR Specialist (Temporary Upgrade), BPH HSC, Vital Registration, Department of Health and Human Resources
- EE 2023-63** Jonathan Bailey, HTRETCN - D-1 Materials Supervisor, Department of Transportation, Division of Highways
- EE 2023-64** Todd W. Keplinger, Materials Supervisor, Department of Transportation, Division of Highways
- EE 2023-65** Noah Staker, Highway Engineer Trainee II, Department of Transportation, Division of Highways
- EE 2023-66** Carl B. Bulson, Staff Engineer/Transportation Engineer Trainee 2, Department of Transportation, Division of Highways
- EE 2023-67** Eliot R. Watson, Materials Office Coordinator, Department of Transportation, Division of Highways
- EE 2023-68** Meagan Atkinson, Project Supervisor/TRETSR, Department of Transportation, Division of Highways
- EE 2023-69** Roy Anson Cline, Transportation Engineering Analyst, Traffic Design, Temporary Traffic Control, Department of Transportation, Division of Highways
- EE 2023-70** David Scott Abbott, Integrated Construction Technologies Supervisor, Department of Transportation, Division of Highways
- EE 2023-71** Toni Rogers, Area Manager, Department of Transportation, Division of Highways
- EE 2023-72** Donald Meadows, Development & Special Event Coordination Engineer, Department of Transportation, Division of Highways
- EE 2023-73** Barrie F. Foster, Highway Engineer Trainee, Department of Transportation, Division of Highways
- EE 2023-74** David E. Brabham, Regional Operations Engineer/Interim District Engineer/Manager, Department of Transportation, Division of Highways
- EE 2023-75** Michael A. Mance, Highway Engineer Senior, Assistant Director, MCS&T Division, Department of Transportation, Division of Highways
- EE 2023-76** C. Elwood Penn, IV, Director, Planning Division, Department of Transportation, Division of Highways
- EE 2023-77** Steven M. Runyon, Assistant Director In-House, Engineering Division, Department of Transportation, Division of Highways
- EE 2023-78** Daniel S. Watts, District Construction Engineer, Department of Transportation, Division of Highways
- EE 2023-79** Craig A. Iser, District Bridge Engineer, Department of Transportation, Division of Highways
- EE 2023-80** Ryan Cunningham, Highway Transportation Engineering Technician Associate, Department of Transportation, Division of Highways

- EE 2023-81** Brandon G. Martin, District Engineer, Department of Transportation, Division of Highways
- EE 2023-82** Thomas E. Fitzwater, Jr., District Surface Inspector, Office of Miners' Health, Safety and Training
- EE 2023-83** Matthew Mollohan, District Surface Inspector, Office of Miners' Health, Safety and Training
- EE 2023-84** William D. Dague, TRETENO, District Six, Materials Supervisor, Department of Transportation, Division of Highways
- EE 2023-85** Donald Maynor, District Surface Inspector, Office of Miners' Health, Safety and Training
- EE 2023-86** Jonathan Clark, Construction Engineer, Department of Transportation, Division of Highways
- EE 2023-87** Matthew H. Skiles, Assistant Director, Traffic Engineering Division, Department of Transportation, Division of Highways
- EE 2023-88** Suman Thapa, Transportation Engineer, Concrete Section Supervisor, Department of Transportation, Division of Highways
- EE 2023-89** Stephen T. Rumbaugh, Chief Engineer of Construction, Department of Transportation, Division of Highways
- EE 2023-90** Ryan E. Arnold, TENGR – Area Engineer, Department of Transportation, Division of Highways
- EE 2023-91** Michele Woodall, Realty Agent II, Department of Transportation, Division of Highway
- EE 2023-92** George Roling, Transportation Engineer in Training 2, Department of Transportation, Division of Highways
- EE 2023-93** Michael Carter, PS&E Manager, Quality Assurance and Project Management Section, 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, required to undergo Ethics training, fined up to \$5,000 per violation, ordered to pay restitution and/or ordered to reimburse the Commission for its costs of investigation and prosecution. The Commission also may recommend that the person be removed from office or that his or her public employment be terminated.

Complaints

Calendar year	Total New Complaints filed	Initiated by Commission (of total filed)	*Dismissed without investigation	*Investigated during year	*Dismissed after investigation	*Resolved via Conciliation Agreement
2023	114	0	97	14	10	7
2022	74	0	57	14	13	5
2021	90	0	85	19	15	3
2020	127	0	81	37	40	9
2019	105	0	35	65	50	6

*The last four columns of this chart reflect the resolutions of Complaints that were pending in the designated year regardless of the year the Complaint was filed.

**Calendar year	Total Complaints filed	Initiated by Commission (of total filed)	Dismissed without investigation	Investigated	Dismissed after investigation	Resolved via Conciliation Agreement	Still Pending
2023	114	0	97	12	4	0	9

**This chart reflects the status of the Complaints filed in 2023, which shows that 9 of them are still pending.

Staff-initiated Investigations

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

Calendar Year	Total Staff-Initiated Investigations	Total Complaints filed by Commission
2023	27	0
2022	37	0
2021	30	0
2020	28	0
2019	27	0

Public Hearings

The Ethics Commission had one public hearing in 2023.

[VCRB 2020-71](#) Daniel Elliott, Conservation Technician, Tygarts Valley Construction District

The public hearing for Daniel Elliott, a former Supervisor and Conservation Technician, Tygarts Valley Conservation District, was held and completed on August 22, 2023. It is alleged in the Statement of Charges that Respondent Elliott 1) Rented his personal equipment to the Tygarts Valley Conservation District in violation of the public contract restrictions in the Act, and 2) Converted the proceeds from selling timber from a Tygarts Valley Conservation District project for Christmas bonuses for District employees in violation of the private gain restrictions in the Act.

On December 7, 2023, the Ethics Commission found that the evidence at the public hearing established by clear and convincing evidence that Daniel Elliott had materially violated the prohibited public contract and private gain provisions of the Ethics Act. The Commission concluded that he had a financial interest in rental contracts which exceeded \$1,000 in a calendar year and had control over the rental contracts because he chose the equipment needed for projects, selected the projects to be undertaken, and oversaw the use of the equipment rented from himself. The Commission also concluded that he knowingly and intentionally used the lumber sale proceeds, to which the Conservation District was entitled, for the private gain of his work crew by giving his work crew a bonus and allowing another employee to keep \$134.62 from the lumber sale.

The Ethics Commission ordered the following sanctions against Daniel Elliott: a public reprimand, restitution of \$9,202.50 to the Tygarts Valley Conservation District for the amount he received for renting his equipment, restitution of \$819.48 to the Tygarts Valley Conservation District for the value of the lumber sold, a fine of \$5,000 for violation of the prohibited contracts provision, a fine of \$1,000 for violation of the private gain provision, reimbursement of to the Ethics Commission in the amount of \$4,466.49

for the actual costs of prosecuting his violation, and an Ethics Act training requirement. Mr. Elliott has appealed the Commission's final order to the WV Intermediate Court of Appeals.

Conciliation Agreements during 2023

VCRB 2021-24 Gregory L. Stewart, Former Ohio County Commissioner

Gregory L. Stewart was the Administrator of the Ohio County Commission until his retirement on December 31, 2020. Eli Stewart is the Respondent's son. Eli Stewart was hired to work for the Ohio County Development Authority at The Highlands some time prior to 2013. As of July 1, 2016, Eli Stewart worked on the maintenance crew at The Highlands. The maintenance crew was supervised by The Highlands Project Manager Brian Taylor. Eli Stewart was, however, later moved to the office crew. The office crew reported directly to the Respondent who split his time between the Ohio County Commission Offices and The Highlands. As the supervisor for The Highlands' office crew, the Respondent approved leave time for his son, Eli Stewart.

Logan Stewart is also the Respondent's son. Logan Stewart was hired to work for the Ohio County Development Authority at The Highlands some time prior to 2013. As of July 1, 2016, Logan Stewart worked on the construction crew at The Highlands. The construction crew was supervised by the Respondent. On days the Respondent was present at The Highlands, he would direct the construction crew and assign them daily tasks. On days that the Respondent was not present at The Highlands, he would instruct The Highlands Project Manager Brian Taylor of the specific daily tasks to give to the construction crew. Although the construction crew would contact Brian Taylor if they had any issues with materials on days the Respondent was not present on site, the Respondent was the direct supervisor for the construction crew and directly supervised his son Logan. As the supervisor for The Highlands' construction crew, the Respondent approved leave time for his son, Logan Stewart. This leave was approved on an individual basis and was not a decision made with respect to a class of five or more construction crew employees.

The Respondent admitted that he violated the Ethics Act and its nepotism restrictions at W. Va. Code § 6B-2-5(b) and W. Va. Code R. § 158-6-3 (2017), by directly supervising his sons Eli Stewart and Logan Stewart and approving their leave requests. He agreed to the following sanctions: 1) An Order directing him to undergo training on the West Virginia Governmental Ethics Act, and 2) A fine in the amount of \$7,500.

VCRB 2022-27 Christopher Phillips, Mayor, Town of Reedy

Christopher Phillips is the Mayor of the Town of Reedy located in Roane County, West Virginia. In the fall of 2020, Phillips had a Town employee use the Town's backhoe, a John Deere 310, to load timber from private property, situated in Reedy, into Phillips'

private truck. The private property owner had given the timber to Phillips with the condition that Phillips remove the timber from the owner's property. Phillips used the timber for firewood. The Town employee performed the timber removal work during his regular Town of Reedy work hours and did not use leave time. The employee's rate of pay is \$16 per hour, and the employee spent approximately five hours loading the timber into the Mayor's private truck.

Phillips acknowledged that using a Town employee and the Town's backhoe for private purposes violated the Act's private gain restrictions at W. Va. Code § 6B-2-5(b). He agreed to the following sanctions: 1) An Order directing him to cease and desist from using Town equipment and Town employees for private purposes; 2) A fine in the amount of \$250; 3) To pay the Town of Reedy \$380 as restitution for the use of the Town employee and backhoe. This amount represents five hours of the employee's time at \$16 per hour for a total of \$80, and an estimated rate of \$300 for a comparable backhoe rental; and 4) An Order directing him to undergo training on the West Virginia Governmental Ethics Act.

Danny Grace Mayor of Town of Wayne (Pre-Complaint Conciliation Agreement)

Danny Grace is the Mayor of the Town of Wayne and held that position during the COVID-19 pandemic in the spring and summer of 2020. The Town of Wayne's regular employees, who worked in the Town Hall and had various administrative duties, frequently could not report to work due to COVID-19 quarantine requirements. Grace determined that the Town should hire trustworthy temporary employees to perform minor clerical duties at the Town Hall until the regular employees were able to return to work. Grace states that he did not post the positions because he felt pressure to resolve the situation quickly. Grace hired his adult son, Devan Grace, and another individual to whom he was not related. Grace informed the Town Council of his decision to hire his son and the other person, and the Town Council voted to approve their employment. Grace did not, however, remove himself from the hiring decision.

Mr. Grace admitted that he should not have been involved in the decision to hire his son and should not have supervised him. Mr. Grace agreed to pay a \$500 fine and to undergo training on the Ethics Act, and to cease and desist from any such actions in the future.

Michelle Tharp Penalzoa Community Development Block Grant Disaster Recovery Program Manager/Resiliency Unit Manager, West Virginia Department of Economic Development (Pre-Complaint Conciliation Agreement)

Michelle Tharp Penalzoa ("Tharp Penalzoa") is an employee of the West Virginia Department of Economic Development ("Department of Economic Development"). Tharp Penalzoa began her employment with the West Virginia Development Office in 2018 to assist with a federal grant given to the state of West Virginia to help it recover from the 2016 flood. Her job title is Community Development Block Grant Disaster

Recovery Program Manager/Resiliency Unit Manager. [The W. Va. Development Office became the Department of Economic Development in 2021 per a legislative enactment.]

SBP (also known as the St. Bernard Project) is a nonprofit entity that assists government agencies and other entities to prepare for and recover from natural disasters. SBP hosts Disaster Recovery Leader Practitioner Courses to further its mission to shrink the time between disaster and recovery. In January 2020, West Virginia Development Office employees, including Tharp Penaloza, attended a SBP leadership course in New Orleans, LA. SBP provided the training and covered lodging and travel expenses for Tharp Penaloza and the other employees through a Walmart Foundation grant. It was permissible under the Ethics Act for Tharp Penaloza and the other employees to attend the training and to have SBP pay for their expenses because their attendance at the conference enhanced their job skills thereby providing a benefit to the state of West Virginia.

In August 2020, the Development Office, with signature approval from the West Virginia Office of Technology, submitted a request for proposals for a disaster case computer management system. The United States Department of Housing and Urban Development (HUD) required that the state of West Virginia procure this technology system due to adverse findings made by HUD in an audit of West Virginia's administration of federal grant funds given to aid the state in recovering from severe flooding in 2016. Tharp Penaloza assisted in drafting the bid specifications for the disaster case management system. The West Virginia Purchasing Division awarded the contract to SBP, the lowest bidder, in October 2020. Tharp Penaloza then had continuing responsibilities relating to the technology contract between SBP and the Department of Economic Development because she is the state of West Virginia's Resiliency Unit Manager and was one of the persons responsible for reviewing SBP invoices.

Tharp Penaloza was an instructor at SBP's three-day leadership course in New Orleans in November 2021. SBP paid her a \$1,500 stipend for teaching the course which was held during her regular work hours. Tharp Penaloza's supervisor authorized her to attend the course and to accept the stipend. The supervisor advised Tharp Penaloza that she did not have to take annual leave, and Tharp Penaloza did not. The state of West Virginia and SBP paid her travel expenses. Hence, the monetary value to Tharp Penaloza for teaching the course was \$1,500, and because she did not take annual leave to teach the course, her receipt of the money from SBP constituted double dipping.

Tharp Penaloza states that she accepted the \$1,500 stipend based upon erroneous guidance she received from her supervisors. Tharp Penaloza states that she is reimbursing SBP \$1,500 to correct the error and will provide the Ethics Commission with a receipt from SBP evidencing its receipt of payment.

SBP also asked Tharp Penalzoza to be an instructor at its January 2022 and February 2022 leadership courses in New Orleans. For each three-day course, SBP paid her a stipend of \$1,500 and covered her travel costs. Since Tharp Penalzoza took annual leave to teach the course, she was not double dipping. Further, Tharp Penalzoza asserts that she had a negative net gain because her costs, including her meal expenses, childcare expenses, and the value of her annual leave exceeded the amount she was paid by SBP.

Tharp Penalzoza acknowledged that the West Virginia Governmental Ethics Act, at W. Va. Code § 6B-2-5(h)(1), prohibits her from being employed by, or working as an independent contractor of, an agency vendor over whom she exercised control. She further acknowledged that W. Va. Code § 6B-2-5(m) prohibits her from receiving compensation for other employment or work during her regular state of West Virginia work hours unless she takes annual leave or compensatory time and that this law is commonly referred to as the “double dipping” restriction.

Tharp Penalzoza agreed to pay a \$200 fine to the Ethics Commission, provide the Ethics Commission written confirmation from SBP that she reimbursed SBP \$1,500 for the payment she received from SBP for being an instructor at the SBP November 2021 leadership conference in New Orleans, and undergo training on the Ethics Act.

VCRB 2022-03 Gary Keith, former City Council, City of Clarksburg

Gary Keith (“Keith”) served as a City Council member of the City of Clarksburg. The City of Clarksburg is governed by seven City Council members serving four-year staggered terms. The Mayor and Vice Mayor are elected by the City Council from their own members to serve a two-year term. On June 4, 2019, there was a Clarksburg City election, and three of the seven Council seats were on the ballot. Keith was one of the three new Council members elected for a four-year term, commencing on July 1, 2019, and ending on June 30, 2023. As a Council member, Keith receives compensation and benefits from the City.

Historically, City elections were held every two years on the first Tuesday in June in odd-numbered years. The City of Clarksburg decided, in order to increase voter turnout, to amend its City Charter to hold its elections on the same day and year as West Virginia’s primary election day, which is the second Tuesday in May in even-numbered years. The City Charter amendment required the City Council members to pass an ordinance (“New Election Date Ordinance”) proposing the Charter amendment and then place the New Election Date Ordinance on the next municipal election ballot for approval by the voters in the June 2021 City election.

The change to a new election date required the City to reconcile the Council members’ terms of office with the change from odd to even year elections so that there would not be vacancies on City Council. The proposed ordinance (“Direct Election of Mayor and Extension of Terms Ordinance”) created two sets of five-year terms of office for City

Council members. Importantly, the Direct Election of Mayor and Extension of Terms Ordinance stated that the three Council members who were first elected in June 2019, including Keith, would have their terms extended by one year, ending on June 30, 2024, instead of June 30, 2023. The City Council voted on the Direct Election of Mayor and Extension of Terms Ordinance three times in 2021 for the following purposes: a vote on first reading, a vote on second and final reading, and a vote to place the Ordinance on the next general election ballot. Keith participated in all three votes.

The Direct Election of Mayor and Extension of Terms Ordinance was placed on the June 1, 2021, General Election ballot and was passed by the voters; hence, the terms of office of Keith and two other Council Members were extended by one year, until June 30, 2024, under the terms of the newly passed Ordinance.

Thereafter, the City Council determined that there were defects in the Charter Amendments passed during the 2021 election. In 2023, to fix the defects in the Charter Amendments, the City Council proposed two additional ordinances: Charter Amendment No. 23-4 “An Ordinance of the City of Clarksburg Amending Sections 5, 25, and 38 of the City Charter” (hereinafter “Charter Amendment 23-4”) and Ordinance No. 23-5 “An Ordinance Regarding Charter Amendments and Elections” (hereinafter “Ordinance Placing Three Council Seats on Upcoming Ballot”) (collectively “New Ordinances”). Notably, Charter Amendment 23-4 contained a provision ending the terms of office for the three seats elected in June 2019, on their original expiration date of June 30, 2023, and placing those three seats on the June 6, 2023, election ballot for the voters to elect three council members to serve a one-year term. The Ordinance Placing Three Council Seats on Upcoming Ballot resulted in Keith’s seat and the two other seats being on the June 6, 2023, municipal election ballot.

There was a first reading and second and final reading for both New Ordinances; hence, the City Council voted on the New Ordinances on four occasions. Keith participated in all votes and voted in favor of having his Council Seat on the 2023 ballot.

Keith had a financial interest in his term of office because he received compensation and benefits for serving on City Council. Keith did not, however, recuse himself from the discussions and vote on the Direct Election of Mayor and Extension of Terms Ordinance, Charter Amendment 23-4, or Ordinance Placing Three Council Seats on Upcoming Ballot.

Keith also maintained that he relied upon advice of counsel regarding whether he may vote. The West Virginia Supreme Court has held, “[e]xcept for malicious prosecution suits, it is generally held that reliance on advice of counsel is not an absolute defense to charges that a person is acting unlawfully or negligently.” *Powers v. Goodwin*, Syl. pt. 3, 174 W. Va. 287, 324 S.E.2d 701 (1984).

Keith admitted that he violated the voting provision in the West Virginia Governmental Ethics Act, at W. Va. Code § 6B-2-5(j), when he did not recuse himself from the

discussions and votes on the ordinances authorizing the voters to consider an amendment to the City Charter that would extend his term of office for one year. He acknowledged that he had a financial interest in his term of office as a City Council member being extended because he was compensated for serving on City Council and received benefits.

Keith agreed to pay a fine of \$1,000 to the Ethics Commission and undergo training on the Ethics Act.

VCRB 2018-26 Lloyd “Allen” Cogar, former Chief of Police, City of Richwood

Lloyd “Allen” Cogar (“Cogar”) was the Chief of Police for the City of Richwood. The Richwood Police Department (“Police Department”) is a subunit of the City of Richwood. The Chief of Police is appointed by the Mayor. As the Chief of Police, Cogar had direct authority and control over all Police Department contracts, including purchases using Police Department funds. Although Cogar’s position gave him authority or control over Police Department funds, most transactions were approved by the Richwood City Council prior to the transactions taking place. As the Chief of Police, Cogar was issued a City of Richwood Purchasing Card (“P-Card”).

Cogar also owned Allen’s Discount Tire LLC (“Allen’s Tire”), a business that sold automobile tires and performed automobile maintenance. Between July 6, 2016, and March 28, 2017, the Respondent used his P-Card for a total of \$1,501 for purchases for goods and services for the City of Richwood Police Department from Allen’s Tire. Cogar maintained that although he used his P-Card to make purchases for goods and services for the City of Richwood at his business, Allen’s Tire, he sold all goods at cost to the City of Richwood with no profit to himself or his business. It was his belief that in doing so he was not violating any provision of the Ethics Act and that he was doing a favor for the City of Richwood.

Cogar acknowledged that using his City of Richwood P-Card to purchase goods and services for the City of Richwood Police Department from his business, Allen’s Tire, in the amount of \$1,501 did not comply with W. Va. Code § 6B-2-5(d)(1) of the West Virginia Governmental Ethics Act. He also asserted that he was unaware of these restrictions in the law, and believed that the purchases from his business were permissible because neither he nor his business profited from the sale of goods and services to the City of Richwood.

Cogar agreed to pay a fine of \$500 to the Ethics Commission and undergo training on the Ethics Act.

VCRB 2022-42 Nyle Whittington, Former Building and Grounds Manager, Putnam County Commission

Nyle Whittington is the former Putnam County Commission Building and Grounds Manager. One of the Respondent's job duties as the Building and Grounds Manager was to inventory and sell County-owned surplus vehicles, including vehicles owned by the Putnam County Sheriff's Department, at a public auction. Respondent organized and oversaw the County's September 29, 2018, vehicle auction. Prior to the auction, Whittington removed two of the County's surplus vehicles so that he and another County employee, Putnam County Sheriff's Department Chief Deputy Hayzlett, could purchase the vehicles outside the auction process.

Respondent purchased a 2012 Ford Escape XLT Sport Utility from the County for \$200 outside, and he allowed Chief Deputy Hayzlett to purchase the 2011 Chevrolet Impala from the County for \$200. Respondent altered the auction receipt records to make it appear that the two \$200 cash payments were actually received as payment from a registered bidder for another vehicle sold in the September 29, 2018, public auction. Respondent also advised Chief Deputy Hayzlett that it was legal for a County Commission employee to purchase a vehicle from the County Commission outside the auction process.

The approximate net book value of the 2012 Ford Escape at the time of the auction was \$2,072.10. The approximate net book value of the 2011 Chevrolet Impala at the time of the auction was \$1,917.55. There were four registered bidders, and the County sold eleven vehicles at the September 29, 2018, auction for prices ranging from \$500 to \$2,500.

The Respondent admitted that he violated the private gain and public contract restrictions in the West Virginia Ethics Act, at W. Va. Code § 6B-2-5(b) and § 6B-2-5(d), by removing two of the County Commission's surplus vehicles from the County's public auction, purchasing one of the vehicles for \$200, and allowing another County employee to purchase the other vehicle for \$200. He agreed to the following sanctions: 1) A fine in the amount of \$3,000; 2) An Order directing him to pay restitution to the Putnam County Commission in the amount of \$3,589.65; 3) An Order directing him to undergo training on the West Virginia Governmental Ethics Act, and 4) A Public Reprimand.

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. For the calendar year 2023, the Commission registered 91 new or reinstated lobbyists.

Active Registered Lobbyist by calendar year

2023 – 386
2022 – 362
2021 – 321
2020 – 347
2019 – 358

Lobbyist spending by calendar year

2023 – \$741,332.10
2022 – \$429,854.83
2021 – \$342,983.58
2020 – \$713,783.11
2019 – \$498,382.31

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 at [Financial Disclosure Search](#).

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

2023 – 3,162
2022 – 3,759
2021 – 3,240
2020 – 3,285
2019 – 3,017

Training – Public Servants and Lobbyists

The Ethics Commission staff provides training on the Ethics Act, the Open Governmental Meetings Act, and the Administrative Law Judge Code of Conduct to large groups of public officials and employees and to lobbyists. 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 2,325 public officials, employees, and lobbyists in 2023 for the following agencies, associations, and events:

- Association of Government Accountants annual meeting
- Bureau for Child Support Attorneys
- Bureau of Family Assistance
- Cabell County Commission
- Camp Dawson (trade specialists for Armory Board)
- County Commissioner Training (Auditor's Office)
- Department of Transportation HR
- Jefferson County Development Authority
- Judicial Investigation Commission
- Legislative Training
- Lobbyist Training (2)
- Municipal League
- Purchasing Training
- Quarterly Training for the Public on the Ethics and Open Meetings Acts (4)
- Southern Educational Services Cooperative
- State Auditor's Chapter 30 Licensing Board annual meeting
- State Auditor (County Clerks and Deputies)
- State Auditor P-card training
- State Purchasing Department
- Treasurer's Office/Cabell County Commission
- WV Department of Education
- WV Division of Rehabilitation Services
- WV Department of Education, Office of School Operations & Finance
- WV State Bar, ALJ Sub Committee of Govt Lawyers
- WV Higher Education Policy Commission
- Workforce Development

New Legislation in 2023

[W. Va. Code §6-9C-1 through 10](#) **Uniform Public Meetings During Emergencies Act.** The emergency meeting act is separate from the Open Meetings Act, at W. Va. Code § 6-9B-1. The new law does not have a provision requiring the Ethics Commission to form a committee to act on requests for advisory opinions interpreting the emergency provisions. Therefore, this Act will not impact the workload of the Commission.

[W. Va. Code § 6B-3-5](#) requires reporting and disclosure requirements for **grassroots lobbying expenditures**. Expenses exceeding \$5,000 in the aggregate within any

three-month period or exceeding \$1,000 in the aggregate within any one-month period in presenting a program addressed to the public must be reported.

[W. Va. Code § 6C-2-2\(b\)](#) **West Virginia Public Employees Grievance Procedure.** Chief administrators and administrative law judges are governed by the West Virginia Ethics Commission’s Legislative Code of Conduct for Administrative Law Judges, Rule 158 CSR 13.” W. Va. Code § 6C-2-2(b) states: “ ‘Chief administrator’ means. . . the county superintendent” and includes a designee appointed by the Chief Administrator “to handle any aspect of the grievance procedure as established by this article.” This new statutory language, therefore, subjects county superintendents and chief administrators in state government to the ALJ Code of Conduct.