



# The Ethics Act

## A Code of Conduct for Public Servants

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## **What is the Ethics Act?**

The West Virginia Governmental Ethics Act (W. Va. Code §§ 6B-1-1 through 6B-3-11) is a code of conduct to guide public officials and public employees in avoiding conflicts between their personal interests and their public responsibilities. The term “public official” includes a public servant volunteer, which is “any person who, without compensation, performs services on behalf of a public official and who is granted or vested with powers, privileges, or authorities ordinarily reserved to public officials.”

## **Who is covered by the Act?**

The code of conduct established by the Act applies to all full-time and part-time public servants (public employees, elected and appointed public officials) who serve in the legislative, judicial and executive branches of state, county and municipal governments and their respective boards, commissions and agencies. It also applies to “public servant volunteer,” which are persons who, without compensation, perform services on behalf of a public official and who are granted or vested with powers, privileges, or authorities ordinarily reserved to public officials.

## **What is the Ethics Commission?**

The West Virginia Ethics Commission was created to administer the Ethics Act. It is comprised of nine part-time citizen members appointed by the Governor and approved by the West Virginia Senate. The Commission is supported by a staff of five full-time and two part-time employees.

## **What does the Commission do?**

The Ethics Commission is responsible for enforcing the Ethics Act and advising public servants regarding the Act.

Many questions from the public can be addressed by staff over the phone ((304)558-0664). Staff also may be contacted by email at [ethics@wv.gov](mailto:ethics@wv.gov).

Some questions require consideration by the full Commission at its regular monthly meeting through the issuance of a written Advisory Opinion.

The Commission’s Committee on Open Governmental Meetings answers questions from governing bodies and their members, and provides Advisory Opinions on the meaning and application of the Open Meetings Act .

The Committee on Standards of Conduct for Administrative Law Judges answers questions from ALJs and provides Advisory Opinions to them which interpret the Code of Conduct for state Administrative Law Judges. It also rules on complaints filed against ALJs.

The Ethics Commission is also responsible for the registration and reporting of lobbyists; the processing of Financial Disclosure Statements, and the collection of disclosures of interested parties to contracts.

# Minimal Ethical Standards\* Established by the Act

*\*Agencies may impose stricter rules of conduct than those set forth in the Ethics Act.*

## Private Gain

The basic principle underlying the code of conduct created by the Ethics Act is that those in public service must use their positions for the benefit of the public and not for their own private gain or for the private gain of another.

For example:

- Public employees and public officials may not use their agency's supplies or equipment for personal projects or activities.
- Public employees and public officials may not work on personal projects or activities during work hours for which they are paid by their government employer.
- Public employees and public officials may not use subordinates to work on personal projects or activities during work hours or compel them to do so on their own time.

## Nepotism

The Ethics Act prohibits "nepotism," which is favoritism shown or patronage granted in employment or working conditions by a public official or public employee to relatives or persons with whom the public official or public employee resides. "Public official" and "public employee" include all elected and appointed public officials and public employees, whether full- or part-time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards. The term "public official" includes a public servant volunteer, which is "any person who, without compensation, performs services on behalf of a public official and who is granted or vested with powers, privileges, or authorities ordinarily reserved to public officials."

"Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.

A public agency, including its officials and employees, must administer the employment and working conditions of a relative of a public employee or a public official or a person with whom the public official or employee resides in an impartial manner. To the extent possible, a public official or public employee may not participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides. If he or she is one of several people with the authority to make these decisions, others with authority shall make the decisions.

A public official or public employee may not directly supervise a relative or a person with whom he or she resides. This prohibition includes reviewing, auditing or evaluating work or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline or related matters. This prohibition does not extend to matters affecting a class of five or more similarly situated employees.

If a public official or public employee must participate in decisions affecting the employment, working conditions or supervision of the public official or public employee's relative or a person with whom the public official or public employee resides, then:

- An independent third party shall be involved in the process. A public official or public employee may not use a subordinate for the independent third party unless it is an elected public official who may not lawfully delegate the powers of his or her office, *e.g.*, county assessor or county clerk, and
- The public official or employee shall exercise his or her best objective judgment in making the decision, and be prepared to justify his or her decision.

## Gifts

The Ethics Act provides that public officials and public employees may not solicit a gift unless the solicitation is for a charitable purpose, and the charitable purpose must be one from which they and their immediate family members derive no direct personal benefit. (However, see the exceptions set forth below.)

Public officials and employees may not directly solicit a subordinate for any gift even if the gift is for a charitable purpose. The Ethics Act's prohibition against solicitation of gifts does not apply to solicitation of political contributions.

The Ethics Act prohibits public officials and public employees from accepting gifts from lobbyists or any person whom the official or employee knows or has reason to know is doing or seeking to do business of any kind with his or her agency; is engaged in activities which are regulated or controlled by his or her agency; or has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

Notwithstanding the general prohibitions set forth in the prior two sections against public officials and employees accepting gifts, the Ethics Act provides that the following types of gifts **may** be accepted by public employees or public officials from lobbyists or others:

- (A) Meals and beverages of any dollar value may be accepted if the person purchasing the meal is present. Otherwise, public officials and employees may accept meals and beverages totaling \$25;
- (B) Ceremonial gifts or awards which have insignificant monetary value;
- (C) Unsolicited gifts of nominal value or trivial items of informational value are permissible if the value of any one item, or a combination of items from the same source, given to a public official or employee does not total more than \$25 in one calendar year;
- (D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement. A public official or employee **may not** accept expenses for amenities at the event such as free golf or spa treatments unless they are part of the room package for all guests staying at the hotel.

- Reasonable expenses for food, travel and lodging for one guest to attend may be accepted;
- (E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office and the tickets are given by the sponsor of the event. Free tickets to sporting events may only be accepted if the ticket is \$25 or less and the ticket is given by a sponsor of the event. If the price of entrance is greater than \$25, an official may accept the ticket only if it is incidental to the conduct of official or ceremonial duties;
  - (F) Gifts that are purely private and personal in nature, or
  - (G) Gifts from relatives by blood or marriage or a member of the same household.

### **Selling to Subordinates**

Although they may choose to buy from a supervisor, a public servant may not personally solicit (in person, by phone or by personal letter) private business from subordinates who the public servant directs, supervises or controls. Solicitations directed to the public at large for sale of property which the public servant is not regularly engaged in selling are permitted.

### **Voting\***

A public official may not vote on a matter in which she, or an immediate family member, has a financial interest or matters involving a business with which she or an immediate family member is associated.

Legislative voting is governed by a separate provision in the Act which permits voting by Legislators after a ruling from the presiding officer in their chamber regarding a potential conflict is obtained.

*\*See **Voting Provisions of the WV Ethics Act** Guideline for detailed information.*

### **Private Interests in Public Contracts, Purchases and Sales**

A public servant may not have a financial interest in any contract, purchase or sale over which his or her public position gives him or her control. The public servant's spouse, dependent parents or dependent children also may not have such an interest unless the total value of the contracts, purchases or sales is less than \$1,000 in a calendar year. The Commission has authority to grant an agency a hardship exemption from this provision.

This provision applies only to:

- (1) those contracts which one's job gives him authority to award or control, and
- (2) those purchases and sales he or she is authorized to make or direct others to make.

Part-time appointed officials (except those covered by W. Va. Code § 61-10-15) are not subject to this prohibition provided they recuse themselves from considering and acting on such matters consistent with the provision regarding voting.

### **Use of Name or Likeness Using Public Funds**

This section of the Act is commonly referred to as the “trinkets statute” and provides that public officials, their agents, or anyone on the public payroll may not place the official’s name or likeness on trinkets and other places paid for with public funds in violation of the section’s limitations and prohibitions. This section is set forth in W. Va. Code § 6B-2B-1 through -6.

This section of the Act provides limitations and prohibitions on the use of public officials’ names or likenesses on “trinkets,” advertising, vehicles, table skirts, banners, educational materials, websites and social media if these items are paid for with public funds.

The statute does not prohibit a public official’s name and likeness on any official record, official report, letterhead, document, certificate or instructional material issued in the course of his/her duties as a public official. Other official documents, such as fax cover sheets, press release headers, office signs and envelopes may include the public official’s name, but not his or her likeness.

### **Licensing and Rate-Making**

A public employee or official may not take official action on a license or rate-making matter affecting an entity in which she, or the members of her immediate family, own or control an interest of 10% or greater. In addition, unless he or she files a prior written public disclosure with his or her agency, a public employee or official may not take official action on a license or rate-making matter affecting a person to whom the entity in which he or she has an interest has sold goods or services totaling more than \$1,000 during the preceding year.

### **Changing Jobs**

Full-time public employees and officials may not: (1) seek employment with, (2) be employed by or (3) seek to purchase from, or sell or lease real or personal property to, any person or business:

(a) that has a matter before the agency on which they are taking, or a subordinate is known to be taking, regulatory action, or

(b) that had, within the preceding 12 months, a matter on which they took, or a subordinate is known to have taken, regulatory action.

The Ethics Commission has authority to grant an exemption from this prohibition.

### **Conflicts of Interest: Employment**

Full-time public employees and officials may not take personal regulatory action on matters affecting a person:

(a) by whom they are secondarily employed, or

(b) with whom they are seeking employment or have an agreement concerning future employment.

### **Dual Compensation**

No public employee or official may receive compensation from two sources in state, county or municipal government for working the same hours except under certain limited circumstances. Persons who are allowed to make up time missed with a governmental employer to perform the duties of another governmental position are required to maintain specific time records. Their employers are required to submit these records to the Ethics Commission on a quarterly basis.

### **Private Pay Prohibited**

Full-time public employees and officials may not accept private pay for providing information or services which are within the scope of their public duties. They cannot sell, even on their own time, services which their public position requires them to provide.

## **Limitations During and After Governmental Service**

**Confidential Information:** Public employees and officials may not, during or after governmental service, knowingly and improperly disclose confidential information acquired through their public positions or use it to further the personal interests of themselves or of another person.

**Prohibited Representation:** The Ethics Act requires a public servant to obtain his or her agency's consent before he or she represents a client in a matter in which he or she is or was substantially involved on behalf of the agency. This applies both during and after the person's governmental service.

The prohibition applies only to those matters in which the public servant was personally involved in a decision-making, advisory or staff support capacity. It does not apply to legislators or legislative staff.

**Limitation on Practice:** Certain public employees and officials are prohibited from representing persons before the agency which they serve during their employment or service and for one year after the termination of their employment or service. This is referred to as the "revolving door prohibition."

This prohibition applies only to elected and appointed public officials and full-time staff attorneys and accountants in agencies authorized to hear contested cases or make regulations.

This prohibition applies to representation in contested cases, regulation filings, license or permit applications, rate-making proceedings and in efforts to influence the expenditure of public funds. It does not apply to legislators or legislative staff.

The Ethics Commission has authority to grant an exemption from this prohibition.

**Lobbying:** The following public officers or employees may not, during or for one year after the termination of their public employment or service, be allowed to register as lobbyists:

- (1) Members of the Legislature;
- (2) Members of the Executive Department as referenced in article VII, section one of the Constitution of West Virginia (Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General);
- (3) Will and pleasure professional employees of the Legislature under the direct supervision of a member of the Legislature;
- (4) Will and pleasure professional employees of members of the Executive Department under the direct supervision of the Executive Department officer and who regularly, personally and substantially participate in a decision-making or advisory capacity regarding agency or department policy;
- (5) Members of the Supreme Court of Appeals;
- (6) Secretaries of the Departments of Administration; Environmental Protection; Health and Human Resources, Military Affairs and Public Safety; Revenue; Transportation; Commerce, and Veterans' Assistance; and
- (7) Heads of any state departments or agencies.

## For County Public Servants Only

Certain county personnel are also subject to W. Va. Code § 61-10-15, which is a criminal statute containing a similar, but more comprehensive, prohibition regarding contracts. The Ethics Commission is responsible for advising public servants about this statute but has no role in its enforcement.

W. Va. Code § 61-10-15 applies to:

- (1) elected county officials (including sheriffs, county commissioners and school board members),
- (2) appointed county officials (those who serve on county boards, commissions, authorities and agencies), and
- (3) public school superintendents, principals and teachers.

It does not apply to other county workers.

W. Va. Code §61-10-15 prohibits these county employees and officials from having personal financial interests, directly or indirectly, in a contract, purchase or sale over which their public position gives them "voice, influence or control." The prohibition extends to their spouses, those whom they support, and businesses in which they have an ownership interest or by which they are employed.

The Ethics Commission has authority to grant exemptions to a county agency based upon documented hardship.

W. Va. Code §61-10-15 imposes strict limitations on nepotism in employment. County officials may not hire their spouses or dependent family members.

There are certain very specific exceptions to this statute. Contact the Ethics Commission with questions.



# Complaints

The Ethics Commission and its Probable Cause Review Board investigate and resolve violations of the Ethics Act. Any citizen who is aware of a violation of the Act may file a written complaint with the Commission. In addition, the Commission itself may initiate a complaint if it receives credible evidence of a material violation of the Act.

Complaints are first reviewed by the three-member Probable Cause Review Board to determine whether the allegations in the complaint, if taken as true as they are required to be at that stage, would constitute a violation of the Ethics Act. The Review Board dismisses complaints which allege trivial or inconsequential violations without an investigation.

Complaints which allege violations of the Ethics Act, and which are not trivial or inconsequential violations, are investigated. After an investigation is completed, the Review Board may either dismiss the complaint or issue an order finding that there is probable cause to believe that the person against whom the complaint was filed violated the Ethics Act. The matter will then proceed to a public hearing or be resolved through a settlement, or “conciliation,” agreement.

Persons found guilty of a material violation of the Act may be publicly reprimanded and fined up to \$5,000 per violation. The Commission also may order restitution and reimbursement to the Ethics Commission for its costs of investigation and prosecution. It also may recommend that the person be terminated from employment or removed from office.

It is a violation of the Ethics Act to give false and misleading information to the Commission or to procure or induce another person to provide false information to the Commission. If the Commission finds by clear and convincing evidence that a complaint was made in bad faith, it may issue sanctions against the person who filed the complaint.

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