

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

ANN NEESE

COMPLAINT NO. CIC 2008-01

COMMISSION'S ORDER

After considering the foregoing FINDINGS OF FACT, ALLEGED VIOLATION and CONCILIATION OF VIOLATION, as required by West Virginia Code § 6B-2-4(s), the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and the Respondent. In accordance with the Conciliation Agreement and in accordance with West Virginia Code § 6B-2-4(r), the Commission imposes the following sanctions:

- (1) The West Virginia Ethics Commission hereby **Orders** that the former public official, Ann Neese, should be and hereby is **publicly reprimanded** for using her public office for personal financial gain;
- (2) The West Virginia Ethics Commission hereby declines to consider whether it should recommend the removal from office of Respondent Ann Neese inasmuch as she has resigned her positions of Mayor of the Town of Pratt and Police Chief of the Town of Pratt, and is no longer a public official in West Virginia;
- (3) The West Virginia Ethics Commission hereby **Orders** Respondent Ann Neese to pay **\$7,5000** for her actions, as follows:

a. Reimburse the Town of Pratt \$7,000, for the unauthorized assignment of overtime hours to herself; and

b. Pay a fine of \$500, payable to the West Virginia Ethics Commission, for violating the West Virginia Governmental Ethics Act;

c. These monetary sanctions are to be paid as follows:
\$2,500 within thirty days of the entrance of this Order, and \$5,000 to be paid in eighteen equal monthly installments, beginning sixty days from the entrance of this Order;

- (4) The West Virginia Ethics Commission hereby Orders that Respondent Ann Neese shall neither run for nor accept appointment to any elected State, county or municipal office for ten years following the execution of this Conciliation Agreement. The Commission further Orders that she shall not accept employment with any municipality, for ten years following the execution of this Conciliation Agreement; and
- (6) If Ann Neese defaults on any monthly payment, she shall be responsible for all costs of the Ethics Commission's enforcement of this Order, including, without limitation, costs and attorney fees.

Date 11-13-08


Kemp Morton, Chair
W. Va. Ethics Commission

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

ANN NEESE

COMPLAINT NO. CIC 2008-01

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Ann Neese freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from the above-referenced Complaint.

FINDINGS OF FACT

(1) Ann Neese (Respondent) was the Mayor of the Town of Pratt at all times relevant herein. Respondent's mayoral salary was \$400 per month. Pratt has a strong Mayor form of government. The Mayor has the right to appoint the Police Chief.

(2) In April 2006, Pratt's Police Chief resigned, and Respondent appointed herself as Pratt's Police Chief.

(3) In the Summer of 2006, the West Virginia Ethics Commission learned that Respondent was serving as both Mayor and Police Chief, and contacted her about it. Respondent told the Ethics Commission that she was only serving as Police Chief on a temporary basis until she could find someone else.

(4) From Summer 2006 through January 2008, the Ethics Commission's staff clearly and repeatedly advised Respondent that she could not serve both as Mayor and Police Chief without violating the Ethics Act. The Commission's Executive Director

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imposed a deadline by which Respondent was to step down as Chief, and extended it once pursuant to Respondent's request, but she did not resign as Chief.

(5) At its November 13, 2007 meeting, Pratt Town Council discussed Respondent's continued service as Police Chief. Respondent incorrectly advised Council that the Ethics Commission authorized her to remain as Chief as long as she was searching for a new Chief. She further inaccurately advised Council that she had 60 days to fill the position unless Town Council passed an ordinance to let her continue as Police Chief.

(6) At its November 13, 2007 meeting, Pratt Town Council voted on a motion regarding Respondent's continued service as Police Chief. Respondent voted in favor of retaining herself, resulting in a tie vote, effectively leaving her in as Police Chief.

(7) As Mayor, Respondent set her own schedule and salary as Police Chief. During her approximate two year tenure as Police Chief, she reported that she worked more than 3,000 hours of overtime.

- a. In 2006, the Town of Pratt paid Respondent \$34,118 for her service as Police Chief;
- b. In 2007, the Town of Pratt paid Respondent \$29,200 for her service as Police Chief; and
- c. In 2008, the Town of Pratt paid Respondent \$16,128 (representing January 1- June 10, 2008) for her service as Police Chief.

(8) On February 7, 2008, the Ethics Commission voted to initiate an ethics complaint against Respondent, based on her conduct described above. The complaint is attached hereto and incorporated by reference as if fully set forth herein.

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(9) On June 10, 2008, Respondent resigned her position as Police Chief.

(10) On August 12, 2008, Respondent resigned her position as Mayor of Pratt.

ALLEGED VIOLATION

W. Va. Code § 6B-2-5(b) provides that a public official or public employee may not knowingly and intentionally use her office or the prestige of her office for her own private gain.

The Commission's Legislative Rule on voting provides that a public official may not vote on a matter which has become personal to her. W.V.C.S.R. § 158-9-2.1. A matter is considered personal if the public official has a financial interest, either directly or indirectly. § 158-9-2.2. (The Legislative Rule has since been superseded by a recent amendment to the Ethics Act. The prohibition against voting is now incorporated directly into the Ethics Act at W. Va. Code § 6B-2-5(j).)

CONCILIATION OF VIOLATION

I, Ann Neese, Former Mayor and Police Chief of the Town of Pratt, freely and voluntarily acknowledge that I should not have used my public office for personal gain. I further acknowledge that I violated the Ethics Act by appointing myself as Police Chief, by assigning myself overtime hours, and by continuing to serve as Police Chief after the Ethics Commission advised me against it. I also acknowledge that I violated the Commission's Legislative Rule on voting when I voted to retain myself as Police Chief.

In Order to resolve this matter, I enter this agreement. By signing this agreement, I agree to the imposition of sanctions by the West Virginia Ethics Commission. I further agree to forego seeking or accepting any public office, elected or

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appointed, or public employment, with any municipality, for ten years following the execution of this Agreement.

For this Conciliation Agreement to be finalized, the Commission must approve the Agreement and must further make determination concerning which sanctions to impose. The Commission may impose one or more of the following sanctions:

- (1) Public Reprimand
- (2) Cease and desist Order
- (3) Orders of restitution for money, things of value, or services taken or received in violation of this chapter, and
- (4) A fine of no more than \$5,000.00 per violation

By signing this Agreement, Respondent Neese hereby acknowledges and agrees that the Commission will impose one or more of the sanctions listed above. In consideration for Respondent Neese signing this Agreement, the Commission shall impose not more than a total of \$7,500 in monetary sanctions. Further the Commission, in its discretion, shall determine how to allocate the appropriate amounts for fines and/or restitution. In the event the Commission enters an Order imposing any sanction exceeding or in addition to those specifically set forth herein, then this Conciliation Agreement is null and void.

Respondent Neese and her legal counsel waive the opportunity to appear before the Ethics Commission in an adjudicatory session prior to the Ethics Commission making a determination as to which sanctions are appropriate based upon the applicable facts and circumstances. Instead, Respondent Neese has submitted a Statement of Mitigation and Extenuating Situation for the Commission's consideration, which is attached hereto. Although the Ethics Commission does not admit the

Initials AN

statements made therein, it will give it due weight when determining the sanctions to impose.

Respondent Neese agrees to pay \$2,500 within thirty days of the entrance of this Order, and the remaining \$5,000 in eighteen equal monthly installments, beginning sixty days from the entrance of this Order.

It is further hereby agreed that if the Commission fails to approve this Conciliation Agreement that the matter will be referred back to the Probable Cause Review Board where the Complaint will continue to be processed in accordance with the West Virginia Code and the Commission's legislative rules.

If the Ethics Commission approves the agreement, it will enter an Order in which it approves the agreement and sets forth the sanctions it elects to impose.

By entering this Conciliation Agreement, Respondent does not admit, but rather hereby specifically denies, that she has violated any civil, penal or administrative law, statute, ordinance or regulation, except those violations of the West Virginia Ethics Act, specifically set forth hereinabove. The Commission and Respondent further expressly agree that this Conciliation Agreement, and the terms and provisions hereof, may not be used in relation to nor admitted into evidence in any proceeding before any state, county or local court, tribunal or administrative agency; expressly excepting therefrom, that the Commission retains its rights under the Ethics Act to seek judicial enforcement of this Conciliation Agreement and the Commission's Order contemplated hereby in the event that Respondent violates any of the terms of this Conciliation Agreement, including but not limited to, timely payment of the penalties and sanctions imposed by the Commission.

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Both parties understand that, pursuant to W.Va. Code § 6B-2-4(s), the
Conciliation Agreement and Commission Order must be made available to the public.

Date: 11/13/08

Kemp Morton
Kemp Morton, Chairman
W.Va. Ethics Commission
Morton

Date: 11/11/08

Ann Neese
Ann Neese, Respondent

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West Virginia Ethics Commission, Complainant

v.

CIC 2008-01

Ann Neese

COMPLAINT

This Complaint is being filed by the Executive Director of the West Virginia Ethics Commission against Ann Neese, as ordered by majority affirmative vote of the Ethics Commission on February 7, 2008 in accordance with West Virginia Code § 6B-2-3a.

Ann Neese is the elected Mayor of the Town of Pratt, West Virginia. Pratt has a strong-mayor form of government. The Mayor has the power to appoint a Chief of Police.

Mayor Neese was first elected to office in 2005. In approximately 2006, she appointed herself as the Chief of Police. Based upon information and belief, Mayor Neese is not certified as a police officer.

In approximately July of 2006, the Ethics Commission became aware that Ann Neese was serving as both the Mayor and the Chief of Police for the Town of Pratt. The Ethics Commission conducted an inquiry into this matter to determine whether the situation presented was contrary to the Commission's holding in A.O. 2006-05 wherein the Commission ruled that an elected Mayor in a strong-Mayor form of government could not also be employed by the Town.

In 2006, the Ethics Commission contacted Mayor Neese to discuss the situation. Mayor Neese represented to the undersigned, Lewis G. Brewer, Executive Director of the WV Ethics Commission, and the Commission's investigator, John Weaver, that she had only appointed herself to serve as the Chief of Police on a temporary basis until the Town could find a new Chief of Police. Based upon information and belief, after that communication, and to date, neither the Town of Pratt nor Mayor Neese placed an advertisement for the Chief of Police position. Further, there has been no formal attempt to hire a Chief of Police.

By letter dated October 15, 2007, the undersigned wrote to Mayor Neese and asked her to contact him or the Commission's Legal Counsel within 5 days to discuss why she was still serving in both positions. (Correspondence incorporated into the complaint by reference and attached hereto). In response to the letter, Mayor Neese contacted the Commission's Legal Counsel, Theresa M. Kirk, and related that it was her belief that she was entitled to serve in both positions. By letter dated October 22, 2007, the undersigned communicated to Mayor Neese that in his opinion, her decision to

appoint herself as the Chief and to continue to hold that position directly contradicted an Attorney General opinion which sets forth that "When a statute confers the appointing power, and does not expressly authorize self-appointment, the appointment of some other than self is always contemplated." 38 W.Va. Op. Atty. Gen. 15 (1938) (Correspondence incorporated into the complaint by reference and attached hereto). The undersigned further requested that Mayor Neese remedy the conflict within 60 days. The undersigned also requested that if there were legal grounds to support her belief that either she or the Town's Legal Counsel put the grounds in writing.

Mayor Neese then came to the Ethics Commission to discuss the situation in-person and to request 90 days, as opposed to 60 days, to remedy the situation. By letter dated October 26, 2007, the undersigned summarized the meeting and stated he declined to approve her request to remedy the situation in 90 days, but that he would extend the time frame until January 3, 2008.

Based upon information and belief, in November or December of 2007 the Town Council voted to terminate Mayor Neese as Chief of Police. There was a split vote. Mayor Neese then broke the vote by voting in favor of herself remaining as Chief of Police.

To date, Mayor Neese remains as Chief. Further, based upon information and belief, at some point while she was the Chief of Police, Mayor Neese did, without the consent of City Council, raise her hourly pay as Chief of Police from \$8.00 to \$10.00. Based upon information and belief, Mayor Neese supervises herself as the Chief of Police and determines how many hours she will work as the Chief.

West Virginia Code § 6B-2-5(b) prohibits a public official from using his or her office for private gain. This code provision reads:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

The Commission's Legislative Rule on voting states that a public official may not vote on a matter which has become personal to them. W.V.C.S.R. § 158-9-2.1. A matter is considered personal if the public official has a financial interest, either directly or indirectly. § 158-9-2.2.

Mayor Neese has knowingly and intentionally used her office for private financial gain by appointing herself as the Chief of Police, giving herself a salary raise, supervising herself, and voting in favor of retaining herself as the Chief of Police. These acts constitute a violation of the WV Ethics Act and the related rule on voting.



Lewis G. Brewer
Executive Director

VERIFICATION OF COMPLAINT

State of WEST VIRGINIA

County of Kanawha, to wit:

Lewis G. Brewer, the Complainant named in the foregoing Complaint being duly sworn, says that the facts and allegations contained therein are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be on information, she/he believes them to be true.

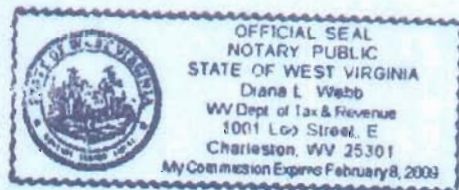
Lewis G. Brewer

Complainant (signature)

Taken, sworn to and subscribed before me this 11th day of FEBRUARY, 2008.

Diana L Webb

Notary Public





STATE OF WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION
210 BROOKS STREET, SUITE 300
CHARLESTON, WEST VIRGINIA 25301-1804
(304) 556-0664 • FAX (304) 558-2186
ethics@wvdmr.gov • www.wvethicscommission.org

LEWIS G. BREWER
EXECUTIVE DIRECTOR

COPY

October 15, 2007

Mayor E. Ann Neese
Town of Pratt
PO Box 128
Pratt, WV 25162

Dear Mayor Neese:

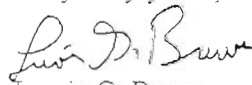
In July of 2006, a citizen informally complained that you, as the Mayor of the Town of Pratt, had appointed yourself as the Chief of Police. As you are aware, in Advisory Opinion 2006-05, the Ethics Commission ruled that a newly appointed Mayor in a "strong mayor" municipality should not continue her employment as a part-time payroll clerk with the City. (Opinion enclosed). The Commission ruled in relevant part:

Although both positions are part-time and the Mayor would be able to fulfill both job responsibilities during the course of a work week, an inescapable conflict exists as the Mayor must supervise the City's employees. The conflict could not be avoided by the Mayor recusing herself on relevant votes or even delegating management responsibilities over her payroll clerk position. While the requester may be able to balance these job responsibilities and perform her positions in an impartial manner, as a matter of public policy and due to the conflicting nature of the duties and responsibilities, the Ethics Commission finds that the Ethics Act prohibits the Mayor from also being regularly employed by the City.

Upon receiving the informal Complaint, both myself and the Ethics Commission investigator spoke with you. You related to us that the Town was attempting to hire a new Chief of Police.

At this time, based upon information and belief, you are still serving in both positions while at the same time being compensated on an hourly basis for your service as Chief of Police. I would respectfully ask that you call me or the Commission's Legal Counsel, Theresa Kirk, within the next 5 business days in order that we may discuss the status of this matter. Thank you for your cooperation.

Very truly yours,


Lewis G. Brewer

ADVISORY OPINION NO. 2006-05

Issued on May 4, 2006 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A newly appointed **Mayor** asks whether she may continue her current employment with the City as a part-time payroll clerk.

FACTS RELIED UPON BY THE COMMISSION

The requester has recently been appointed as Mayor to fill an unexpired term. The requester is also a part-time employee of the City. She held this job prior to her appointment. Her title is "payroll clerk."

The City in question has a strong Mayor form of government. The Mayor is responsible for hiring and firing employees and is the supervisor of all municipal departments.

The City requires the Mayor to work twelve hours a week. The part-time payroll position requires twenty-four hours of work per week.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads:

(b) *Use of public office for private gain.* -- (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code §6B-2-5(d) reads in relevant part:

(d) *Interests in public contracts.* -- (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

W. Va. 158 CSR 9 reads:

2.1. A public official or public employee may not vote on or decide a matter that has become "personal" to that individual.

2.2. For the purpose of this section a matter will be considered "personal" to a public official or public employee when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety. An interest is not "personal" if the interest of the public official or public employee in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or class.

2.3. For a public official's or public employee's recusal to be effective, it is necessary for the official or employee to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period, fully disclose his interest, and recuse himself from voting on the issue.

ADVISORY OPINION

The Commission has not issued an advisory opinion on the specific question presented. It has examined this question in cases where the Mayor had limited power over employees. For instance, in A.O. 91-21 the Commission ruled that there was nothing in the Ethics Act which would prohibit a City employee from running for Mayor when the City had a City Manager form of government. Under this form of government, neither the Town Council nor Mayor is responsible for the day to day management of the City; instead this responsibility is delegated to the City Manager. Similarly in A.O. 2003-04, the Commission held that a Mayor could serve as a temporary city manager where the Mayor was elected from among the Council's members and had no more authority than the other members.¹

The present case is distinguishable from the previous situations considered by the Commission. The requester, as the elected Mayor, has responsibility for hiring and firing employees as well as supervising them. Due to the responsibilities of the Mayor in this governing body, it is necessary to determine whether it presents a conflict of interest for the Mayor to also be a part-time employee.

West Virginia recognizes the doctrine of incompatibility of offices. *State ex. rel. Thomas v. Wysong*, 24 S.E.2d 463 (W.Va. 1943); and, 43 W.Va.Op. Atty. Gen. 338 (1949). This doctrine stands for the proposition that "incompatibility rests not upon physical inability to perform the duties of both offices, but arises from the inconsistent nature of the offices and their relation to

¹ The cited cases should not be relied upon by elected and appointed County officials who are subject to the more stringent prohibitions embodied in W.Va. Code § 61-10-15.

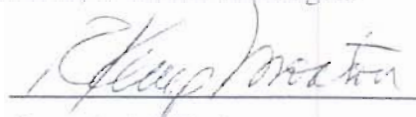
each other, rendering it improper, from considerations of public policy for one person to perform the duties of both." *Id.*

While the Ethics Commission is not charged with the responsibility of interpreting this common law doctrine, the principles are explicitly intertwined with the conflict of interest provisions in the Ethics Act. West Virginia Code § 6B-2-5(d) prohibits elected officials from having an interest in a contract over which they exercise control but contains an exception which reads "[N]othing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body." As such this provision standing alone does not prohibit all municipal officials from also being employed by the municipality which they serve. However, the Ethics Act further prohibits the use of public office for private gain. The Commission finds that the spirit and intent of this prohibition would be violated if an elected official is employed by his or her governing body on a permanent basis when the elected official has the power to hire, fire and supervise employees.

Although both positions are part-time and the Mayor would be able to fulfill both job responsibilities during the course of a work week, an inescapable conflict exists as the Mayor must supervise the City's employees. The conflict could not be avoided by the Mayor recusing herself on relevant votes or even delegating management responsibilities over her payroll clerk position. While the requester may be able to balance these job responsibilities and perform her positions in an impartial manner, as a matter of public policy and due to the conflicting nature of the duties and responsibilities, the Ethics Commission finds that the Ethics Act prohibits the Mayor from also being regularly employed by the City.

The Commission qualifies its holding in this opinion with the recognition that there may be times, particularly in small towns, where due to an unexpected vacancy created by the death or resignation of an employee that a Mayor may have to temporarily take on additional job responsibilities. Likewise there may be times when a Town needs to hire temporary laborers due to an emergency or immediate short term labor need. In those situations it may be appropriate for the Mayor to be employed on a temporary basis and to be compensated for his or her work. However, the Mayor should first seek advice from the Ethics Commission to ensure that the proposed temporary employment is appropriate.

This advisory opinion is limited to questions arising under the Ethics Act, W.Va. Code § 6B-1-1, *et. seq.*, and does not purport to interpret other laws or rules. In accordance with W.Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.


Commission Chairman



STATE OF WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION
210 BROOKS STREET, SUITE 300
CHARLESTON, WEST VIRGINIA 25301-1904
(304) 558-0664 • FAX (304) 558-2165
ethics@wvethics.gov • www.wvethicscommission.org

LEWIS G. BREWER
EXECUTIVE DIRECTOR

October 22, 2007

Mayor E. Ann Neese
Town of Pratt
P.O. Box 128
Pratt, WV 25162

Dear Mayor Neese:

Thank you for calling and speaking with the Commission's Legal Counsel, Theresa Kirk, in response to my recent correspondence. Based upon your conversation with Ms. Kirk, it appears you are contending that your elected position as Mayor makes you responsible for overseeing the Police Department, and therefore you should be able to appoint yourself to serve as Chief of Police, rather than delegating this responsibility by employing another person in this capacity.

Unfortunately, the position you are taking is directly opposed to the conclusion of the Ethics Commission that this relationship creates an inevitable, and impermissible, conflict of interest. Your argument is premised upon the underlying circumstance that you are required to supervise yourself. In addition, there is no provision in the State Code which we can find that suggests that one person may serve as Mayor and simultaneously be compensated for serving as Chief of Police. Moreover, your employment as Chief of Police while serving as Mayor conflicts with the general legal principle: "When a statute confers the appointing power, and does not expressly authorize self-appointment, the appointment of some other than self is always contemplated." 38 W. Va. Op. Atty. Gen. 15 (1938).

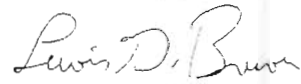
In a telephone conversation we had regarding this situation over one year ago, you indicated that the Town of Pratt would attempt to find a new Chief of Police. Not only has this not occurred; it does not appear that you have pursued a good faith effort to accomplish this. You indicated to Ms. Kirk that the position has not been advertised in the newspapers in Kanawha County.

If you choose to continue serving indefinitely as Mayor and Chief of Police, and accept compensation for both positions, I will be obligated to go to the Ethics Commission for direction on whether to file a formal ethics complaint against you. It is neither our intent nor desire to create a hardship for you or the Town of Pratt. Therefore, you will have 60 days from the date of this letter to elect which position you prefer to retain, and resign from the other.

If you believe there are legal grounds to support your dual service as Mayor and Chief of Police, I would respectfully request that you or Legal Counsel for the Town of Pratt set forth those grounds in writing, so that we may properly evaluate your legal

position. Otherwise, I would ask that you notify me when you have taken action to remedy this situation in accordance with this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lewis G. Brewer".

Lewis G. Brewer



STATE OF WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION
210 BROOKS STREET, SUITE 300
CHARLESTON, WEST VIRGINIA 25301-1804
(304) 556-0564 • FAX: (304) 556-2169
ethics@wvadmin.gov • www.wvethicscommission.org

LEWIS G. BREWER
EXECUTIVE DIRECTOR

October 26, 2007

Mayor E. Ann Neese
Town of Pratt
PO Box 128
Pratt, WV 25162

Dear Mayor Neese:

I have been informed that you stopped by the Ethics Commission offices on Thursday, October 25, 2007 to meet with me. As I was unavailable, you then asked to speak with Theresa Kirk, Legal Counsel.

Ms. Kirk met with you. It is my understanding that you related to her as follows:

1. You had never placed an advertisement for the Chief of Police position because you consider advertisements in the Charleston Gazette to be too expensive;
2. Based upon your experience with police corruption in Montgomery, in part you did not want to hire anyone until you were absolutely certain you could trust the person;
3. That you are paid \$8.00 an hour as Chief of Police. At times you work 12 hours a day;
4. That several of your family members had cancer approximately two years ago. You went through a stressful time during these family illnesses;
5. That your husband lost his job at WV Tech. It has been hard for him to find another job. He is currently unemployed;
6. That Eric Eagle currently works as a police officer in Pratt. You think you may hire him as Chief. You are awaiting results from a credential proceeding in which Eagle is involved due to Mr. Eagle recently pleading guilty to "double dipping" violations.
7. If you cannot be the Chief of Police, then you will not be able to pay your bills.
8. You also stated that it is close to Christmas and you have concerns about the financial pressure of losing your job during this Holiday Season. You then asked, "Can you give me 90 days instead of 60." [You were referring to the 60 day time period specified in my letter dated October 22, 2007 where I requested that you cease and desist from simultaneously holding the positions of Mayor and Chief of Police. I also provided you with the opportunity to provide me with

legal authority to support your position that you are entitled to hold both positions.]

If you believe that any of the items outlined above inaccurately summarize what you related to Ms. Kirk, then I would ask that you write to me for the purpose of providing any corrections you believe are necessary in order that the summary of your conversation is accurate. Unless I hear from you by Friday, November 2nd, I will assume that you agree that the substance of your conversation has been accurately summarized.

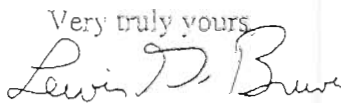
Next, please note that our communications with you, under the facts and circumstances presented, do not immunize you from being subject to prosecution under the Ethics Act. There is nothing which prevents a citizen from filing a Complaint against you based upon this situation.

If a Complaint is filed with the Ethics Commission, then it will be processed consistent with the Commission's normal procedures. At that point the Probable Cause Review Board would have to determine if there is probable cause to believe that a violation of the Ethics Act has occurred. If there is a probable cause finding, then the matter will proceed to a hearing and you may be subject to sanctions which include fines not to exceed \$5,000.00 per violation.

In regards to your request for an additional 30 days to remedy this situation, I have considered your request. As I related to you in my letter dated October 22, 2007, it was my expectation that you would remedy this situation within 60 days (December 22, 2007). I respectfully decline your request for a 30 day extension of the original time frame. However, I am willing to withhold seeking the initiation of a formal Complaint if you resign as either Mayor or Chief of Police by January 2, 2008. Once again, to avoid a conflict of interest, you may not hold both positions simultaneously.

Last, please note that as long as you simultaneously hold both positions, in my opinion you are increasing the probability that a citizen may file a Complaint against you with the Ethics Commission. Once again, you do not have immunity under the Ethics Act if a complaint is filed against you. If a Complaint is filed against you, I cannot predict the outcome because ultimately whether a public official is guilty of violating the Ethics Act is a matter which must be decided by the Probable Cause Review Board and the Ethics Commission. As such, while I will not seek permission from the Commission to file a Complaint against you until and unless you fail to resolve this conflict by resigning from one position or the other by January 2, 2008, any citizen may nonetheless file a Complaint against you. Such a Complaint will be timely if it is filed within 2 years of the last date on which you held both positions.

I am enclosing an Ethics Act brochure. Please call if you have any questions.

Very truly yours

Lewis G. Brewer

November 5, 2008 – Response of Ann Neese

In running for the office of Mayor of Pratt, the top issue was to stop the use and sale of drugs which had made the town and its streets unsafe during the day and night. The citizens wanted 24/7 police protection. The second main issue was the large number of stray dogs and cats roaming the streets. I pledged to do my best to rid the town of both matters. I received an overwhelming majority of the votes.

The first police chief resigned after telling the town council that, "...I am a police officer, not a dog catcher." To keep my word, I started catching the stray dogs and cats in my personal car. This, along with the investigation as to the location of all the missing police equipment and guns, required a great deal of time. I felt obligated to the citizens to give them fulltime coverage thus, leaving my job as a counselor at West Virginia Tech.

After months of filling the duties of Mayor and Police Chief, I asked John Veazy, the Town Recorder, if I could be paid to be the police chief. He told me, as well as the Town Council, that I could do so while I advertised and hired a new police chief. I asked him how long that could take and he said that he was told by a person at the Ethics Commission that it varied; he said that it was difficult to have a stated time.

Having lived in the Upper Kanawha Valley (UKV) all my life, I know all too well about the history of corruption that has existed among too many of the law enforcement officers in this area. These are the individuals who would have wanted to be hired as police chief and/or as a part time law enforcement officer. They would have brought suit if I ran an advertisement for the same and did not hire them. There were several law enforcement officers, that I knew from my earlier days as a law enforcement officer, who were currently or would soon be eligible for retirement. I knew them and their reputation well enough to know that they would not be pulled into the long existing corruption of some UKV law enforcements. In the past few months, television and newspapers have reported accountings about the same individuals who would have responded to the published advertisement, had I chosen to advertise.

Meanwhile, the number of police officers on the department declined for various reasons (i.e. resignation; dismissal for altering log sheets, gas logs, etc). With one remaining certified and experienced officer and myself, we finally began to stop the trafficking of illegal drugs in Pratt. We both knew the UKV well; we knew the key drug players as well as their carriers, etc. and we knew who could and could not be trusted. Steadfastly and carefully, we removed the drug dealers and buyer from the streets, the "sneakers" came down from the power lines, the streets were no longer roamed by curfew violators, the random acts of vandalism ceased and the defacing of public streets and buildings stopped. I worked day and night (as can be verified by my neighbors and by my unhappy family members) consistently going on two or three hours of sleep/seven days a week. I varied from patrolling on foot, to using my car or my husband's car when I was not in the cruiser. This, along with varying schedules, allowed us to accomplish the aforementioned.

"I did not handle any of the Town's finances. I left that up to the recorder. I say this because I truly did not know that overtime did not have to be paid unless you employed four or more people. When John Veazy, the Town Recorder, told me this I was surprised. I immediately told him to stop paying me overtime and to let

me have an opportunity to tell the other officer, which I did that evening. He agreed to stay on and not be paid overtime as well. It was my own omission in not being aware of the law, totally lacking any intent or purpose.

When I first took office as the Mayor Pratt, I hired six police officers and a chief. The chief was paid a set salary, received uniforms and equipment, had a cruiser to take to his residence in East Bank and only worked the day shift Monday through Friday. The Sergeant, a certified police officer, was paid \$10.00 hourly and the non-certified officers were paid \$8.00 hourly. I do not recall the exact dates. I do know the following:

- two of the new officers were terminated by the police chief;
- the police chief resigned after his outburst and refusal to enforce the stray dog and cat ordinance;
- another officer was terminated for falsifying documents;
- I was assisting in covering shifts to maintain my pledge of 24/7 law enforcement coverage;
- I regularly received calls at home, day and night, from citizens seeking assistance even when another officer was on duty. Many of the citizens were comforted in knowing that they could call me at any time and I would be there to help them;
- I hired a certified officer with vast experience as Captain, however there were some questions about his previous employment with the Town of Jefferson Police Department so, I proceed cautiously. It went well until he was offered a better position elsewhere;
- I asked about the possibility of being paid for filling in as the police chief;
- the last of the original officers that were hired when I first took office was allowed to resign when faced with repeatedly disobeying orders and making unauthorized purchases for the police department.
- this left me with the Captain and myself which allowed us to start making drug arrests. It seems that some of the previous officers were involved with some of the drug dealers and user;
- with just the two of us, the Captain agreed to 12 hour shifts, 7 days a week and his pay was increased to \$10.00 an hour;
- I have no recollection of telling anyone to increase my pay from \$8.00 per hour to \$10.00 however, I do know that when it was brought to my attention, I immediately corrected the matter and instructed the recorder to change my rate back to \$8.00. I do recall that at the time I did this, the recorder commented "Well you ought to make the same, if not more, since you carry the extra responsibility." I disagreed and stated that I didn't need any trouble.

In regards to the vote issue, I admit that I, unwittingly, cast my vote on a matter that I clearly should not have done. When it was brought to my attention, I apologized at the next council meeting and asked that the record reflect the same. In all honesty, it was done as a result of sheer grief, exhaustion and real exasperation with the same group of, not more than a hand full, citizens/council members who ran against me for the Mayor's office and lost (150+ votes to their 10). Even the citizens were fed up with this group. Unknown to me, they circulated a petition asking me to continue my good work and stay on as Mayor and police chief. I believe there were over 270 signatures on that document. I believe that says a lot, in this day, of people being afraid to appear too bold in matters of this nature.

Within two months of my election to office, my aunt was diagnosed with kidney cancer. My mother was one of three sisters. My mother was the only one to have children. The sisters were extremely close all their lives and it is well known that the "White children" had 3 mothers..my mother and her

sisters. They were the prime example of life mates – all the days of their lives. The family was devastated when my Aunt Helen was diagnosed with cancer. We had just spent two year battling my father's prostrate cancer; now this!

Additional grief was to be: For several months my mother was eating very little, was increasingly tired and could not get her diabetes under control. She waited until she knew that her sister was recovering before seeking medical attention. Nine weeks after my aunt's surgery, Mom was diagnosed with ovarian cancer. She needed surgery to remove the ovaries but, the cancer was so widespread in the abdominal area that reconstruction would be too extensive for her to survive. She had no choice except to undergo chemotherapy. It was one disaster after the other, including: an electrolyte shutdown, reactions to chemo, clot in her lung, heart problems, foot infection and at last, a broken leg and the spread of her cancer.

My Aunt Betty, the oldest sister, was told she needed to see a cardiologist badly. She chose not to – why, because all her life she had been the caregiver – the mother figure, especially after the death of her parents in their early fifties. Her goal was to keep her sister comfortable. She did not even share the diagnosis with her husband. Mom had surgery to remove her ovaries and continued with chemo and all its side effects. Then, my Aunt Helen had a six bypass heart surgery. One month later Mom broke her leg in several places, requiring hospitalization and rehab. She stopped her chemo, knowing it was the end. We had one last Christmas together. The first of 2007, Mom was told that the cancer had spread to her chest area. You cannot image the family meltdown.

The worst lay ahead – On January 31, 2007, my Aunt Betty died suddenly of a lung embolism, congestive heart failure and a cardiac infarction. Amid all that grief, we knew we were losing my mother. With all this, I tried to keep my promise to the citizens of Pratt...24/7! Then, my Mom died on February 26th. It was too much!!!

My Aunt Betty was Chairman of the Board of Montgomery General, after having a most successful career in teaching – with students in highly professional positions. My Mom was the Mayor of Montgomery, past president of the Chamber of Commerce and president of Tech's Alummi. My Aunt Helen is a legend in Charleston, having presided over several organizations: Symphony League, Hadassah, Heart Association, WV Board of Licensed Dietitians and several other national groups. My upbringing was to serve...to serve my fellowman. If I failed at it, it is no reflection on them. They taught me to be responsible. Perhaps if I had had someone on the Council to whom I could have turned to help me sort out all the legalities at a time when I needed much "sorting". I observed a town nearby – Handley – where the mayor serves as Mayor, Chief of Police and Judge. He seemed to do okay with it. I can only surmise that I did not truly realize the consequences of my actions. How could it be so "wrong" if the intentions were so "right".

After the death of my Mom, I went through the motions of working but, I had no concept of time or date. It took all I had to get through the day and night. I remembered that my job was to protect and serve the citizens of Pratt and on that I did not waiver.

In my family life, my Aunt Helen was the only sister left. Her life was devastated. I knew I had to be available for her – to listen to her for hours. We feared that with her health problems and her grief that it would prove to be too much for her. I do not regret being there for her – we, my family, we need her. That's all we have left!!!

My Mom and my two aunts are the strongest women I know. They were taught to "make a difference" and they have – each in their own professions and in their communities and state. They instilled that same quality in me – and I never want to lose it.

I deeply regret not following the directions of the Ethics Commission. In the beginning and with information given to me by Mr. Veasey, I truly thought I was in compliance. Then, when it was brought to my attention, I was, emotionally, in no condition to realize the severity of the issues. We, the citizens of Pratt, looked around and saw this occurring in other cities in West Virginia. I thought I was doing what was best for Pratt. I accept the blame – to say I am sorry seems so trite but, the shame I have brought to my family – a family that deserves better will be with me the rest of my life – even though two of the key players are no longer with me. To have acted with love for Pratt and those wonderful people who supported me, leaves me with sadness that I did not get to complete the job to which I was elected.....and the loss of our accomplishments in such a short time.

I ask you to look kindly upon this letter. I hope you will never know the grief of my losses – and I realize grief is the price we pay for loving. I do not blame them (only the circumstances) for my lack of response in a timely manner.

I would like you to know that I am still unemployed, as is my husband. Fifty-five year olds have a very difficult time finding work especially with the depression accompanying the elimination of one's 28 year career in the same location. He estimates that his retirement fund will be depleted in about ten months. As for me, my psyche is so fragmented with all my personal losses and then this legal manner that I am often rendered unable to function. I pray for finality, forgiveness and the strength to "make a difference" in other areas.

Ann Neese -

