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WV ETHICS COMMISSION

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

2011 JUN -2 AM 11:29
IN RE:

**Sherry Cain
VCRB #2010-15**

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Sherry Cain freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code §6B-2-4(s) to resolve all potential charges pursuant to the Ethics Act arising under VCRB #2010-15 filed on May 10, 2010.

FINDINGS OF FACT AND LAW

1. Respondent served as the town administrator for the town of Harpers Ferry, in Jefferson County, West Virginia, at all times relevant to the allegations contained within the complaint. She resigned from the town of Harpers Ferry in 2010.
2. The complaint alleges that respondent violated the Ethics Act by improperly using her position to get her granddaughter a part time job and later a full time job at the town. Also, it is alleged that she violated the town's nepotism policy by supervising her granddaughter and by paying her for work she did not perform. (Respondent's granddaughter is also a respondent in VCRB #2010-15.)
3. The complaint alleges that respondent further violated the Ethics Act by placing her sister, who was not a town employee, on the town's Sam's Club membership account.
4. The complaint alleges that respondent further violated the Ethics Act by showing favoritism to her brother-in-law and/or his business by improperly awarding him snow removal contracts for the past three (3) years and paying him an excessive hourly rate.
5. The complaint alleges that respondent further violated the Ethics Act by awarding yearly snow removal contracts to Donnie Hampshire and Hampshire Excavating, Inc., which she failed to place out to bid;
6. Lastly, the complaint alleges that respondent violated the Ethics Act by purchasing town vehicles from and having them serviced by Guy's car dealership, her ex-husband's employer. It is alleged that she was

cohabitating with him which may indicate a financial relationship between him and respondent.

7. Respondent, through counsel, filed an answer with the Ethics Commission on September 21, 2010, in which she denied the allegations against her and raised the defenses of statute of limitations and lack of intent to violate the Ethics Act.

8. The investigation revealed that respondent's sister was first placed on the town's Sam's Club account in 2000. The respondent stated that she had permission from the then-mayor to do so. In recent years, this membership cost \$35.00 annually, per member. The respondent stated that her sister paid her in cash for the membership fees and that respondent deposited the fees into the town's proper accounts. Respondent admitted that she forgot to deposit last year's fee. Records from the town were requested, but records indicating that the town had been reimbursed by respondent could not be located by the town. The town acknowledged that its records are poorly organized.

9. In Advisory Opinion #2010-18, the Ethics Commission held that a town employee cannot receive a Sam's Club membership as a valid fringe benefit – even if there is no additional cost to the town. While the alleged violations occurred prior to the date of this opinion, the advisory opinion is persuasive authority to support the position that by placing a non-employee on a town's account, the Ethics Act would be violated.

10. The investigation revealed that the Mayor of Harpers Ferry, not respondent, selected respondent's brother-in-law to perform overflow snow removal work for the town. He was paid a competitive, fair rate.

11. The investigation showed that respondent was not involved in the selection process of Donnie Hampshire to perform snow removal work.

12. The investigation revealed that the respondent's ex-husband worked for Guy's car dealership, a private business located in Charles Town, West Virginia and owned by Guy Chicchirichi. Mr. Cain, at all relevant times, worked in the positions of customer relation care manager, warranty manager and service advisor.

13. The investigation revealed that a vehicle was bought by the town from Guy's car dealership in 1997, but that the respondent was not involved in the selection process. Also, this purchase occurred outside of the statute of limitations. Within the applicable two-year statute of limitations, respondent authorized, on behalf of the town, work to be performed by Guy's car dealership in the amount of \$1,600.00. However, respondent's ex-husband was

not an owner, director or officer of the car dealership. Therefore, pursuant to W.Va. C.S.R. §158-8-4, respondent did not receive a prohibited financial benefit from her actions. Still, as her husband was employed there, Respondent recognizes that she should have had the Mayor or Council review this decision.

14. The investigation revealed that the town's mayor authorized the hiring of respondent's granddaughter and that she was hired for both her part time and full time positions outside of the statute of limitations.

15. Respondent's granddaughter admitted that she falsified her time sheets and received unearned pay. However, respondent and her granddaughter deny that respondent was aware of her granddaughter's misconduct because the fraudulent hours claimed to have been worked by respondent's granddaughter were early morning hours before respondent began her work day.

RELEVANT LEGAL PROVISION

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

CONCILIATION OF VIOLATION

I, Sherry Cain, freely and voluntarily acknowledge that I should not have engaged in any action or conduct which resulted in the use of my public employment for personal gain. I further acknowledge that, based on my current knowledge and understanding, I have violated the Ethics Act by including my sister on the town's Sam's Club membership account.

I believe that it is in my best interests and the best interests of the public to resolve this matter without further proceedings; therefore, I enter into this agreement. By signing this agreement, I agree to the imposition of sanctions by the West Virginia Ethics Commission.

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

- a. An order of Restitution for money, things of value, or services in the amount of \$ \$70.00 representing two years of Sam's club membership fees; and,
- b. A fine of \$ 200.00, and a
- c. Public Reprimand.

By signing this Agreement, Sherry Cain, hereby acknowledges and agrees that the Commission will impose one or more of the sanctions listed above. 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.

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.

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: 7/14/11

for Uren-Radford
Kemp Morton, Chairperson
W.Va. Ethics Commission

Date: 5/24/11

Sherry A. Cain
Sherry Cain

/kbw

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

Sherry Cain,
Former Employee, Town of Harpers Ferry

COMPLAINT NO. VCRB 2010-15

COMMISSION ORDER

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

- (1) The West Virginia Ethics Commission hereby **Orders** that the former public employee, Sherry Cain, should be and is hereby is **publicly reprimanded** for using her public employment for the financial gain of another;
- (2) The West Virginia Ethics Commission hereby **Orders** that Respondent Sherry Cain pay the Town of Harpers Ferry \$70.00 representing two years of Sam's Club membership fees for the card used by her sister; and,
- (3) The West Virginia Ethics Commission hereby **Orders** Respondent Sherry Cain to pay a fine of \$ 200.00, payable to the West Virginia Ethics Commission. The fine is to be paid within 30 days of the entrance of this Order

Date: July 14, 2011


Drema Radford, Acting Chairperson
West Virginia Ethics Commission