

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

COMPLAINT NO. VCRB 2019-92

**DAVID STRATTON,
Chief of Police,
Town of Matewan**

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and David Stratton freely and voluntarily enter into the following Conciliation Agreement pursuant to W. Va. Code § 6B-2-4(t) to resolve all potential charges arising from allegations in the above-referenced complaint.

FINDINGS OF FACT

1. David Stratton ("Respondent" or "Stratton") is employed by the Town of Matewan as its Chief of Police.
2. At all times pertinent herein, Stratton was a "public employee" or "public official" as defined in the Ethics Act, at W. Va. Code §§ 6B-1-3(j) and (k).
3. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act committed by public employees or officials, such as Stratton. W. Va. Code §§ 6B-1-1 through 6B-3-11.
4. On May 2, 2019, the Ethics Commission issued Advisory Opinion 2019-14, holding that a city police officer may not include pictures of himself in uniform in his campaign material because the uniform conveys the endorsement of his police agency.
5. The Respondent is a candidate for the office of Mingo County Sheriff. He has a personal Facebook page which he is also using for his election campaign. On October 29, 2019, the Respondent posted a video of himself in his Matewan Chief of

Police uniform on his personal Facebook page urging the voters of Mingo County to support him in the upcoming election.

6. Upon receipt of the instant Complaint, the Ethics Commission staff, based upon Advisory Opinion 2019-14, asked the Respondent to remove the video from his Facebook page. On or about November 23, 2019, the Respondent removed the video from his Facebook page. After further discussions with Ethics Commission staff, the Respondent has also removed pictures of himself in uniform that he had posted on his Facebook page prior to announcing his candidacy for the 2020 Mingo County Sheriff race.

7. The Respondent states that when he posted the video of himself in his uniform, he was unaware of the Ethics Commission's May 2019 ruling in Advisory Opinion 2019-14.

RELEVANT LEGAL PROVISION

W. Va. Code § 6B-2-5(b) states, in relevant part:

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.

In Advisory Opinion 2019-14, the Ethics Commission held that a city police officer may not include pictures of himself in uniform in his campaign material because it conveys the endorsement of his police agency. This would result in the type of private gain the Ethics Act is intended to prohibit.

CONCILIATION OF VIOLATION

I, David Stratton, the Respondent, admit that I violated the private gain provision in the West Virginia Governmental Ethics Act, at W. Va. Code § 6B-2-5(b), when I posted the video of myself in my law enforcement uniform on my Facebook page as part of my campaign for the office of Sheriff of Mingo County.

In order to resolve this matter, I am entering into this Conciliation Agreement. I understand that for this Agreement to be finalized, the Ethics Commission must approve it and determine which sanctions to impose.

In consideration for the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

1. An Order directing me to cease and desist from including pictures and videos of myself in uniform in campaign material, including on social media or website pages.
2. Training on the West Virginia Governmental Ethics Act, either in person or by viewing the training provided on the Ethics Commission's website, at ethics.wv.gov, within 30 days of entry of the Order approving the Conciliation Agreement. I shall provide written confirmation of the completion of this training to the Ethics Commission within five business days of completing the training.

I understand and agree that if the Ethics Commission fails to approve this Conciliation Agreement, then this Conciliation Agreement is null and void and the Complaint against me will proceed before the Probable Cause Review Board, where it will be processed in accordance with the West Virginia Code and Ethics 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 listed above.

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

2/6/20
Date

Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

1-27-2020
Date

David Stratton
David Stratton, Respondent

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COMMISSION'S ORDER

After considering the Findings of Fact, Relevant Legal Provision and Conciliation of Violation in the Conciliation Agreement, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and David Stratton as required by W. Va. Code § 6B-2-4(t). In accordance with W. Va. Code § 6B-2-4(s), the Commission imposes the following sanctions:

1. The Ethics Commission hereby **ORDERS** Respondent Stratton to cease and desist from including pictures and videos of himself in uniform in campaign material, including on social media or website pages.
2. Respondent Stratton shall undergo training on the West Virginia Governmental Ethics Act, either in person or by viewing the training provided on the Ethics Commission's website, at ethics.wv.gov, before March 6, 2020, and he shall provide written confirmation of the completion of this training to the Ethics Commission by March 16, 2020.

2/6/20
Date


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission