

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

COMPLAINT NO. VCRB 2020-13

**DEBRA HAGEDORN,
Board Member,
Deckers Creek Public Service District**

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Debra Hagedorn 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. Debra Hagedorn is an appointed member of the Deckers Creek Public Service District ("PSD") Board which is comprised of three members. Hagedorn has served as a PSD Board member for approximately 25 years.

2. At all times pertinent herein, Hagedorn was a "public official" as defined in the Ethics Act, at W. Va. Code § 6B-1-3(k).

3. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act committed by public employees or officials, such as Hagedorn. W. Va. Code §§ 6B-1-1 through 6B-3-11.

4. In 2005, Hagedorn's daughter, Beth Hagedorn Bosley, began working for the PSD on a temporary, intermittent basis and, in 2011, she became a part-time PSD employee. Hagedorn was not involved in the PSD's decisions to hire her daughter for these positions.

5. In October 2017, the PSD hired Hagedorn's daughter on a full-time basis to assist the PSD in covering the duties of its then full-time Office Manager who, due to personal reasons, had to miss work on a frequent basis.

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6. In January 2018, the former Office Manager left her position with the PSD, and the PSD then hired Hagedorn's daughter as its full-time Office Manager. Hagedorn was not involved in the PSD's decisions to hire her daughter for the Office Manager position.

7. The PSD voted in December 2016 to give merit bonuses to its five employees. The bonuses ranged from \$150 to \$500 with the Board voting to give Hagedorn's daughter, then a part-time employee, a \$200 bonus. Hagedorn participated in the discussions and votes on the 2016 bonuses.¹

8. The PSD again voted in December 2017 to give merit bonuses to its five employees. The bonuses ranged from \$200 to \$450 with the Board voting to give Hagedorn's daughter a \$300 bonus. Hagedorn participated in the discussions and votes on the 2017 bonuses.

9. Hagedorn also participated in the PSD's decisions to give year-end bonuses to its employees in 2018 and 2019. The bonuses for each of these years ranged from \$100 to \$750, slightly higher amounts than the prior years as the PSD did not give across-the-board cost of living increases in 2018 and 2019. The PSD gave Hagedorn's daughter the following bonuses 1) \$500 in 2018 and 2) \$750 in 2019, which were the same amounts given to the PSD's Field Manager – the only other full-time management employee.

10. The Ethics Act and the Legislative Rule governing nepotism contain a class exception which allows a public official or employee to participate in decisions affecting the working conditions, including compensation, of their relatives if the relative is affected

¹ The Ethics Commission encourages the PSD to consult with its attorney or the Auditor's Office to determine whether it has legal authority to give bonuses.

as a member of a class of five or more similarly situated employees.² The PSD's decision to give the bonuses did not fall within the class exception as the PSD's employees were not affected in the same or similar manner. Hence, Hagedorn should not have participated in the discussions or votes on year-end bonuses for her daughter.

11. At no point was Hagedorn the deciding vote in the PSD Board's decision to give the bonuses to its employees or a certain amount to her daughter.

12. On January 7, 2020, the PSD Board members, including Hagedorn, met with a PSD employee to listen to the employee express her concerns about her working conditions and her supervisor, Hagedorn's daughter. The Board then met with Hagedorn's daughter and then both employees together. Hagedorn participated in the meetings with the employee and her daughter at the request of the other PSD Board members who requested that she be present to hear both sides of the story. No action was taken by the Board at this meeting or thereafter against Hagedorn's daughter or the employee.

13. Shortly after the January meeting, the PSD employee quit her employment with the PSD and complained, in part, that Hagedorn should not have been present when the other PSD Board members met with her (the employee) and Hagedorn's daughter about the employee's concerns.

² W. Va. Code § 6B-2-5(j)(2)(A) and W. Va. Code R. § 158-6-3.6

RELEVANT LEGAL PROVISIONS

W. Va. Code R. § 158-6-3 (2017) states:

3.1. As used in this section, the term "nepotism" means 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.

3.2. The Ethics Act prohibits public officials and public employees from knowingly and intentionally using their office or the prestige of their office for their own private gain or the private gain of another person. Nepotism is one form of the use of office for private gain because if public officials or employees use their positions to give an unfair advantage to relatives or persons with whom the public official or employee resides, the primary benefit to such action is to the public official or employee or another person rather than to the public.

3.3. "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.

3.4. A public official or employee may not influence or attempt to influence the employment or working conditions of his or her relative or a person with whom he or she resides.

3.5. 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.

3.5.a. 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.

3.5.b. 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.

3.5.c. Notwithstanding the limitations in this subsection, 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:

...

3.6. A public official may not vote on matters affecting the employment or working conditions of a relative unless the relative is a member of a class of persons affected. A class shall consist of not fewer than five similarly situated persons. For a public official's recusal to be effective, he or she must excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests and recusing him or herself from voting on the issue.

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

Limitations on voting. — (1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

....

(C) The employment or working conditions of the public official's relative or person with whom the public official resides.

(2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

....

CONCILIATION OF VIOLATION

I, Debra Hagedorn, the Respondent, admit that I violated the nepotism restrictions in the Ethics Commission's Legislative Rule, at W. Va. Code R. § 158-6-3.5 (2017), and the voting provisions in the Ethics Act, at W. Va. Code § 6B-2-5(j), when I participated in and voted on the PSD's decision to give the PSD employees, including my daughter, year-end bonuses. I further acknowledge that I should have contacted the Ethics Commission for advice prior to participating in the January 7, 2020, PSD meeting at which the PSD met with a PSD employee and the Office Manager, my daughter, to hear concerns being expressed by a PSD employee about her working conditions. While the purpose of the meeting was to hear both sides of the story and not to take action against any employees, I agree that if a similar situation arises in the future I will not participate until and unless I consult with the Ethics Commission to determine whether it is permissible for me to participate or be present.

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. The Respondent shall undergo training on the West Virginia Governmental Ethics Act within 30 days of the entrance of the Order approving the Conciliation Agreement.

2. A fine in the amount of \$500 to be paid to the West Virginia Ethics Commission within 30 days of the entrance of the Order approving the Conciliation Agreement.
3. An Order directing me to cease and desist from being involved in matters affecting the employment and working conditions of my daughter unless she is affected as a member of a class consisting of not fewer than five similarly situated persons.

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.

11/5/20
Date

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

October 1, 2020
Date

Debra Hagedorn
Debra Hagedorn, Respondent

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

COMPLAINT NO. VCRB 2020-13

**DEBRA HAGEDORN,
Board Member,
Deckers Creek Public Service District**

COMMISSION'S ORDER

After considering the Findings of Fact, Relevant Legal Provisions 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 Debra Hagedorn 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. Respondent Hagedorn 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 December 5, 2020, and she shall provide written confirmation of the completion of this training to the Ethics Commission by December 14, 2020;
2. Respondent Hagedorn shall pay a fine in the amount of \$500 to the West Virginia Ethics Commission by December 5, 2020, and
3. The Ethics Commission hereby **ORDERS** that Respondent Hagedorn cease and desist from being involved in matters affecting the employment and working conditions of her daughter unless her daughter is affected as a member of a class consisting of not fewer than five similarly situated persons.

11/5/20
Date


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission