

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

COMPLAINT NO. VCRB 2021-37

**JAN DZIERZAK,
Park Superintendent
Division of Natural Resources**

Conciliation Agreement

The West Virginia Ethics Commission and Jan Dzierzak 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 of violations of the West Virginia Governmental Ethics Act ("Ethics Act") in the above-referenced Complaint.

Findings of Fact

1. Jan Dzierzak ("Dzierzak" or "Respondent") is a Park Superintendent with the West Virginia Division of Natural Resources ("DNR") at Coopers Rock State Forest—a state park.
2. At all times pertinent herein, Dzierzak was either a "public employee" or a "public official" as defined in the West Virginia Governmental Ethics Act ("Ethics Act") at W. Va. Code § 6B-1-3(j) and 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 Dzierzak. W. Va. Code § 6B-1-1 through § 6B-3-11.
4. Coopers Rock State Forest purchased a Sam's Club Plus membership with public funds to use for state park purchases.


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5. From June 2019 to November 2020, Dzierzak used the state park Sam's Club membership card to make approximately 39 personal purchases or more from Sam's Club. Dzierzak paid for the purchases with personal funds but received the membership benefits by using the state park card.

6. Dzierzak did not claim or use the state's tax-exempt status for his personal purchases, and his use of the state park Sam's Club card did not result in any additional cost to the state.

7. In Advisory Opinion 2010-18, the Ethics Commission held that it would violate the Ethics Act's private gain provision, found at W. Va. Code § 6B-2-5(b), for a public servant to use a Sam's Club membership card purchased with municipal funds even if there is no additional cost to the municipality. The Respondent asserts that he was unaware of Advisory Opinion 2010-18 at the time he made personal Sam's Club purchases with a state park Sam's Club card.

RELEVANT LEGAL PROVISIONS

W. Va. Code § 6B-2-5(b)(2) 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.


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W. Va. Code R. § 158-6-5.2 states:

Improper Use [of Governmental Property] - Public officials and public employees may not use government property for personal projects or activities that result in private gain.

Advisory Opinion 2010-18 states, in relevant part:

[P]ublic officials and employees . . . may not use [a public agency's membership] card to gain admission to . . . Sam's Club and/or to make personal purchases [as it] would . . . constitute an impermissible use of public office for private gain.

CONCILIATION OF VIOLATION

I, Jan Dzierzak, acknowledge that my use of the state park Sam's Club membership card for personal purchases did not comply with the West Virginia Governmental Ethics Act, at W. Va. Code § 6B-2-5(b). In order to resolve this matter, I am entering into this Agreement. I understand that for this Conciliation 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 Ethics Commission imposing the following sanctions:

1. An Order directing me to cease and desist from using the state park Sam's Club membership card to make personal purchases.
2. An Order directing me to 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, within 30 days of the entrance 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 it.


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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 the 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 W. Va. Code § 6B-2-4(t), this Conciliation Agreement and Commission Order must be made available to the public.

9/2/21
Date


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

8/27/21
Date


Jan Dzierzak


JD

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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 interests of the State and Jan Dzierzak 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. Immediately CEASE and DESIST from using the state park Sam's Club membership card to make personal purchases.
2. Respondent Dzierzak 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, by October 2, 2021. Respondent Dzierzak shall provide written confirmation of the completion of this training to the Ethics Commission within five business days of completing it.

Date

9/2/21

Robert J. Wolfe, Chairperson
West Virginia Ethics Commission