

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:
Nyle Whittington,
Former Building and Grounds Manager,
Putnam County Commission

COMPLAINT NO. VCRB 2022-42

Conciliation Agreement

The West Virginia Ethics Commission and Nyle Whittington freely and voluntarily enter into the following Conciliation Agreement pursuant to W. Va. Code § 6B-2-4(t) to resolve all the potential charges arising from the allegations of violations of the West Virginia Governmental Ethics Act based upon the facts set forth below.

Findings of Fact

1. Nyle Whittington (“Respondent” or “Whittington”) was employed by the Putnam County Commission (“County Commission”) as the Building and Grounds Manager at all times pertinent herein and, hence, Whittington was a “public employee” as defined in the Ethics Act, at W. Va. Code § 6B-1-3(j).

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

3. One of the Respondent’s job duties as the Building and Grounds Manager was to inventory and sell County-owned surplus vehicles, including vehicles owned by the Putnam County Sheriff’s Department, at a public auction. The County’s practice at the time in question was to advertise its public auctions in the Charleston Gazette-Mail and to hire an auctioneer to conduct the auction at the Putnam County Courthouse

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parking lot on the advertised auction date. On the auction day, the County would register potential bidders and give them a numbered bid card. (The County now conducts its auctions online.)

4. Whittington organized and oversaw the County's September 29, 2018, vehicle auction. Prior to the auction, Whittington removed two of the County's surplus vehicles, a 2012 Ford Escape XLT Sport Utility with 110,234 miles and a 2011 Chevrolet Impala midsize sedan with 123,633 miles from the list of vehicles to be sold at the auction so that he and another County employee, Putnam County Sheriff's Department Chief Deputy Hayzlett, could purchase the vehicles.

5. Whittington purchased the 2012 Ford Escape XLT Sport Utility from the County for \$200 outside the auction process. Although Whittington paid the County for the vehicle, Whittington altered the auction receipt records to make it appear that his \$200 cash payment was actually received as payment from a registered bidder for another vehicle sold in the September 29, 2018, public auction.

6. Whittington also allowed Chief Deputy Hayzlett to purchase the 2011 Chevrolet Impala from the County for \$200 outside the auction process. Whittington also altered the auction receipt records for this sale to make it appear that the \$200 cash payment received from Hayzlett was actually received as payment from a registered bidder for another vehicle sold in the September 29, 2018, public auction.

7. Hayzlett asked Whittington if it was legal for a County Commission employee to purchase a vehicle from the County Commission outside the auction process. Whittington indicated that it was legal.

8. The approximate net book value of the 2012 Ford Escape at the time of the auction was \$2,072.10.

9. The approximate net book value of the 2011 Chevrolet Impala at the time of the auction was \$1,917.55.

10. There were four registered bidders, and the County sold eleven vehicles at the September 29, 2018, auction. There was no minimum bid price established for the vehicles that were sold at auction. Vehicles similar to the 2012 Ford Escape and 2011 Chevrolet Impala sold in the 2018 auction included:

- A 2010 Ford Explorer, with an estimated 100,000 miles, was sold for \$2,500.
- A 2010 Ford Explorer with 103,000 miles was sold for \$825.
- A 2010 Ford Explorer with 132,476 miles was sold for \$500.
- A 2010 Ford Explorer with 93,275 miles was sold for \$600.

Relevant Legal Provisions

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.

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

Interests in public contracts. - (1) In addition to the provisions of §61-10-15 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.

Conciliation of Violation

I, Nyle Whittington, admit that I violated the private gain and public contract restrictions in the West Virginia Ethics Act, at W. Va. Code § 6B-2-5(b) and § 6B-2-5(d), by removing two of the County Commission's surplus vehicles from the County's public auction, purchasing one of the vehicles for \$200, and allowing another County employee to purchase the other vehicle for \$200. 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 of the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

1. A fine in the amount of \$3,000 to be paid to the West Virginia Ethics Commission in monthly increments of \$250 with the first installment due on January 2, 2024, and on the second day of every month thereafter for the next eleven months to satisfy the \$3,000 fine.

2. An Order directing me to pay \$3,589.65 in restitution to the Putnam County Commission within 30 days of the entrance of the Order approving the Conciliation Agreement and to provide written confirmation to the Ethics Commission that the payment was made within five days of making the payment. This restitution amount is calculated as follows:

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Vehicle	Net Book Value for Fiscal Year Ending June 30, 2019	Amount Received by County for this vehicle	Amount Owed to the County
2012 Ford Escape	\$2,072.10	\$200	\$1,872.10
2011 Chevy Impala	\$1,917.55	\$200	\$1,717.55
			\$3,589.65

3. 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.

4. A Public Reprimand.

I understand and agree that if the Ethics Commission declines 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.

11/2/2023
Date

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

10-13-23
Date

Nyle Whittington
Nyle Whittington, Respondent

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:
Nyle Whittington,
Former Building and Grounds Manager,
Putnam County Commission

COMPLAINT NO. VCRB 2022-42

COMMISSION'S ORDER

After considering the Findings of Fact, Relevant Legal Provisions, and Conciliation of Violations in the Conciliation Agreement, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interests of the State and Nyle Whittington, 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 shall pay a fine in the amount of \$3,000 to the West Virginia Ethics Commission in monthly increments of \$250 with the first installment due on January 2, 2024, and on the second day of every month thereafter for the next eleven months to satisfy the \$3,000 fine.
2. Respondent shall pay \$3,589.65 in restitution to the Putnam County Commission within 30 days of the entrance of this Order and shall provide written confirmation to the Ethics Commission that the payment was made within five days of making the payment.
3. Respondent shall undergo training on the West Virginia Governmental Ethics Act by attending either an in-person or virtual training presented by the Ethics Commission staff or by viewing the training provided on the Ethics Commission's website at ethics.wv.gov, within 30 days of the entrance of this Order and shall provide written confirmation of the completion of this training to the Ethics Commission within five business days of completing it.
4. Respondent is issued a Public Reprimand.

11/2/2023
Date



Terry L. Walker, Acting Chairperson
West Virginia Ethics Commission