

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

GORDON LAMBERT

COMPLAINT NOs. 2006-10, -13 and -14

COMMISSION'S 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 the Conciliation Agreement, and in accordance with West Virginia Code § 6B-2-4(r), the Commission imposes the following sanctions:

- (1) Gordon Lambert should be and hereby is **publicly reprimanded** for his actions which violated West Virginia Code § 6B-2-5(b);
- (2) The West Virginia Ethics Commission hereby **Orders** Respondent Lambert to reimburse the McDowell County Commission \$1,000.00 for the use of the bulldozer. This sum shall be remitted to the County within thirty (30) days of the entrance of this Order;
- (3) The West Virginia Ethics Commission hereby **Orders** that Gordon Lambert pay a fine of \$3,000 to the West Virginia Ethics Commission. The fine is to be paid within thirty (30) days of the entrance of this Order;

- (4) Gordon Lambert shall **cease and desist** from using county resources (including county personnel and inmates in custody in McDowell County) for his own personal or political benefit; and
- (5) Gordon Lambert shall **cease and desist** from using county resources (including county personnel and inmates in custody in McDowell County) to benefit any individual unless that benefit is available to all McDowell County residents.

Date 10/04/07


Kemp Morton, Chair
W. Va. Ethics Commission

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE: GORDON LAMBERT

COMPLAINT NOS. 2006-10, 13 and 14

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Gordon Lambert freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from the above-referenced complaints.

FINDINGS OF FACT

The following facts are hereby stipulated and agreed upon by the West Virginia Ethics Commission and Gordon Lambert and are taken as true and correct:

1. Respondent Gordon Lambert (Respondent) is an elected member of the McDowell County Commission, and served as its President at all times relevant herein.

2. On August 8, 2006, a complaint was filed with the West Virginia Ethics Commission (Commission) against Respondent. The first complaint alleged, in relevant part, that Respondent unilaterally allowed an individual to use the county's bulldozer for his private timbering business. As a result of the loan of the bulldozer, the county did not have the use of the dozer for about one year.

3. Respondent specifically denies allowing this individual to use the county's bulldozer for his private timbering business, but admits he permitted this individual to borrow the county's bulldozer because this individual asked to use it to clear the roadway to a public cemetery. According to Respondent, historically, the McDowell County Commission has offered county equipment to be used to clean up and repair roads to cemeteries in the county.

4. The Probable Cause Review Board has evaluated evidence obtained in the course of the investigation that contradicts Respondent's assertions in the foregoing paragraph.

5. According to Respondent, as President of the McDowell County Commission, Respondent made the decision to loan the county's bulldozer without first obtaining the vote of the full Commission. Respondent asserts that he had received advice from the McDowell County Prosecutor that as President, he had the power to make certain day to day decisions on behalf of the Commission. In this particular instance, however, Respondent did not seek the legal advice of the McDowell County Prosecutor. Respondent acknowledges that the McDowell County Commission has not adopted any policy permitting or restricting the use of county equipment by citizens of McDowell County. Respondent agrees that the County is entitled to be paid the fair market value of the use of the bulldozer.

6. The approximate fair market value of renting a bulldozer for one day is \$300.00.

7. On September 11, 2006, another complaint was filed with the Commission against Respondent. The complaint alleged, in relevant part, that Respondent unilaterally authorized a private citizen to enter upon county property and remove items of value from flooded homes the County purchased with money provided by the Federal Emergency Management Agency.

8. According to Respondent, as of September 11, 2006, a contract already had been issued to a private company to clean up and to have the salvage rights from property damaged during the flood. Respondent asserts that the individual referenced

in the foregoing paragraph asked Respondent to sign a piece of paper advising this private company that this individual could be on the property. According to Respondent, this individual removed items that the private company did not want and that otherwise would be scrapped or placed in the landfill. According to Respondent, Respondent did not ask this individual to make any accounting to the Commission on the items removed from the flooded properties nor did Respondent ask this individual to reimburse the County for whatever value he obtained. Respondent asserts that since the clean up and salvage rights had been contracted with a private company, it was the private company, and not the county, that had any claim to the items this individual removed.

9. The Probable Cause Review Board has evaluated evidence obtained in the course of the investigation that contradicts Respondent's assertions in the foregoing paragraph.

10. On September 11, 2006, another complaint was filed with the Commission against Respondent. The complaint alleged, in relevant part, that Respondent used county resources—personnel and equipment—to advance his political reelection campaign. The complaint also alleges that Respondent used state inmates (housed in correctional facilities located in McDowell County) to perform work with the intent of influencing voters.

11. Respondent denies using any county resources to advance his political reelection campaign. The McDowell County Public Relations Director's job is to promote the work performed by the Commission and inform the public, through press releases, of the Commission's various decisions and actions. As a county employee,

this individual had the right to engage in political activity during her own personal time. According to Respondent, he is not aware of any circumstance where the McDowell County Public Relations Director engaged in political activity during her work day.

12. The Probable Cause Review Board has evaluated evidence obtained in the course of the investigation that contradicts Respondent's assertions in the foregoing paragraph.

13. According to Respondent, the McDowell County Commission does not have a written policy governing the use of state inmates to perform work for the benefit of the county. Respondent asserts, however, that historically, he has authorized work to be performed by inmates for the benefit of the citizens in the county.

14. Respondent admits that the Ethics Act forbids public servants from using public resources for political purposes. Respondent further admits that the Ethics Act forbids public servants from using resources (including county personnel and inmates in custody in McDowell County) to benefit any individual unless that benefit is available to all McDowell County residents.

15. Following an investigation and Respondent's personal appearance, the Probable Cause Review Board found probable cause to believe that Respondent had violated the Ethics Act. Probable cause means that the reliable evidence which the Review Board considered shows that it is more likely than not that Respondent has violated the Ethics Act. It is not a final determination that Respondent has, in fact, violated the Ethics Act.

RELEVANT LEGAL PROVISIONS

West Virginia Code § 6B-2-5(b) provides, in relevant part, that a public official or

public employee may not knowingly and intentionally use her or his office or the prestige of her or his office for her or his own private gain or that of another person. Private gain includes political gain.

West Virginia Legislative Rule § 158-6-5 generally prohibits the use of government property for personal projects or activities that result in private gain. West Virginia Legislative Rule § 158-6-4 prohibits public officials from using subordinate employees during work hours to perform private work or provide personal services for their benefit.

CONCILIATION

I, Gordon Lambert, President of the McDowell County Commission, freely and voluntarily enter into this Conciliation Agreement. I understand that if the Ethics Commission approves the agreement, it will enter an Order in which it approves the agreement and impose certain sanctions. I believe that it is in my best interest and the interest of the public to resolve this matter without further proceedings. In order to resolve this matter, I am signing this agreement. By signing this agreement, I also agree to the imposition of sanctions by the West Virginia Ethics Commission.

I understand that in order for this Conciliation Agreement to be finalized, the Commission must approve it and must further make a determination concerning which sanctions to impose. In the event the Commission enters an order imposing any sanction other than those specifically set forth below, then this Conciliation Agreement is null and void and the case should go forward with a hearing on the merits.

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

- (1) Public Reprimand
- (2) Cease and desist orders
- (3) Orders of restitution for money, things of value, or services taken or received in violation of this chapter not to exceed \$1,000.00
- (4) Fine not to exceed \$3,000.00.

I understand that pursuant to W. Va. Code § 6B-2-4(s), the Conciliation Agreement and Order must be made available to the public. It is further hereby agreed that if the Commission fails to approve this Conciliation Agreement that the above-captioned complaints will proceed to a public hearing.

Date: 10/04/07

Kemp Morton
Kemp Morton, Chair
WV Ethics Commission

Date: 9/30/07

Gordon O Lambert
Gordon Lambert, Respondent