

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

HENRY PAUL

COMPLAINT NO. 2008-05

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 West Virginia Code § 6B-2-4(r), the Commission imposes the following sanctions:

- (1) Henry Paul 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 Paul to reimburse the City of Gary a total of \$229.08 for mileage reimbursement he received for the two year period preceding the complaint. This sum shall be remitted to the City within thirty (30) days of the entrance of this Order;
- (3) The West Virginia Ethics Commission hereby Orders that Henry Paul pay a fine of \$500 to the West Virginia Ethics Commission. The fine is to be paid within thirty (30) days of the entrance of this Order;

- (4) Henry Paul shall cease and desist from accepting mileage reimbursement from any source on those occasions when he has driven the City's vehicle unless the reimbursement check is made payable to the City of Gary and promptly remitted thereto; and
- (5) The West Virginia Ethics Commission recognizes that this is the second time that Henry Paul has violated the Ethics Act and hereby Orders that any further ethics complaint filed against Henry Paul, if he is found to have violated the Ethics Act, will result in the Commission's recommendation to the City of Gary and to the McDowell County Prosecuting Attorney that Henry Paul be removed from office, pursuant to W. Va. Code § 6B-2-4(r)(2).

Date 11-13-08


Kemp Morton, Chair
W. Va. Ethics Commission

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE: HENRY PAUL

COMPLAINT NO. 2008-05

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Henry Paul 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 complaint.

FINDINGS OF FACT

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

1. Respondent Henry Paul (Respondent) is and was the elected Mayor of the City of Gary at all times relevant herein.
2. The City of Gary provides its Mayor with a vehicle and gasoline for the vehicle for his use in conducting City business.
3. Respondent sits on a number of boards and commissions, including the McDowell County Solid Waste Authority (SWA). Upon information and belief, Respondent has not accepted mileage reimbursement from any entity other than the SWA.
4. Respondent does not sit on the SWA Board in his capacity as Mayor or in a representational capacity or behalf of the City of Gary. On occasion Respondent drove the City's vehicle to SWA meetings; on other occasions, he drove his own vehicle.

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5. On May 1, 2008, a complaint was filed with the West Virginia Ethics Commission (Commission) against Respondent. The complaint alleged that Respondent accepted mileage reimbursement for attending SWA Board meetings on various occasions when Respondent had driven to said meetings in the vehicle provided to him by the City of Gary, using gasoline also provided by the City.

6. Specifically, the complaint alleged that on or about August 6, 2007, Respondent received a \$29.10 check from the SWA for Board meetings Respondent attended on April 12, May 10, June 14, and October 17, 2007.

7. The complaint also alleged that on SWA Board meeting dates in July, August, September, and December 2007, although Respondent drove the City's vehicle, using City supplied gasoline, Respondent collected around \$82.00 in mileage reimbursement from the SWA.

8. After Respondent received the above-referenced complaint, he reimbursed the City of Gary \$69.84.

9. In responding to the ethics complaint, Respondent's attorney wrote:

Mayor Paul indicated that on some occasions he would be doing city business and which would include going over to the Solid Waste Authority to a meeting. Trying to isolate times that he was absolutely doing no city business and still received a reimbursement from the Solid Waste Authority is difficult. He has reimbursed the City Of Gary for any mileage reimbursement check that he received that involved his use of the city vehicle and city gas without his being on city business.

It should be noted that the use of the city vehicle and gas has always been liberally construed and Mayor Paul did not intentionally and willfully embezzle or use city funds for his personal gain. Many of the meetings regarding the Solid Waste Authority were in the midst of his actually doing city business and would be difficult to separate. He has decided not to accept future reimbursement rather than trying to separate

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the city business from Solid Waste Authority business and then attempt to proportion any appropriate reimbursement to the City of Gary.

10. No legal authority permits a public official to be personally reimbursed for travel expenses when he did not incur any out of pocket expenses, as here.

11. Respondent contends that he intended to reimburse the City before the end of the fiscal year for his mileage reimbursements received for those meetings when he drove the City's vehicle.

12. Respondent further contends that the complaint against him was politically and personally motivated. The Complainant also filed a Petition for Removal against him based, in part, on the same allegations.

13. Respondent was the subject of an earlier complaint in 2005 wherein it was alleged that in November 2004, Respondent had work performed on his personal vehicle and, although he paid for the repairs, used the City of Gary's tax identification number thereby avoiding the payment of West Virginia Sales Tax.

14. Only after his receipt of the complaint did Respondent pay the sales tax due.

15. The 2005 complaint was resolved by a Conciliation Agreement. On June 6, 2005, the Ethics Commission approved the Agreement and imposed a fine against Respondent for his use of the City of Gary's tax identification number for his personal financial gain.

16. Mayor Paul received mileage reimbursement in the amount of \$229.08 from the SWA for the two year period preceding the complaint. Notwithstanding the fact that on some of those occasions he drove his own vehicle, Mayor Paul will reimburse the entire amount thereof.

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RELEVANT LEGAL PROVISIONS

West Virginia Code § 6B-2-5(b) provides, in relevant part, that a public official may not knowingly and intentionally use his office or the prestige of his office for his own private gain.

CONCILIATION

I, Henry Paul, Mayor of the City of Gary, freely and voluntarily enter into this Conciliation Agreement. I acknowledge that I should not have used my public office for personal gain. I further acknowledge that I violated the Ethics Act by accepting mileage reimbursement on those occasions that I drove the City vehicle, even on those occasions when I drove the City vehicle on City business.

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.

In the interests of resolving this complaint, I have agreed to reimburse the City in an amount that exceeds the amount I actually owe. In exchange, the Commission's Deputy Legal Counsel has agreed to recommend that the Commission impose a \$500 fine. I understand that the Commission may reject that recommendation, and if so, I agree to the imposition of a fine not to exceed \$1,000.

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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 order
- (3) Orders of restitution for money, things of value, or services taken or received in violation of this chapter
- (4) Fine not to exceed \$ 1,000
- (5) Reimbursement to the Commission for the actual costs of investigating and prosecuting a violation
- (6) Recommendation from the Ethics Commission for removal from office

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 above, then this Conciliation Agreement is null and void. It is further hereby agreed that if the Commission fails to approve this conciliation agreement that the matter will be referred back to the Probable Cause Review Board where the Complaint will continue to be processed in accordance with the West Virginia Code and the Commission's legislative rules.

I understand that pursuant to W. Va. Code § 6B-2-4(s), the Conciliation Agreement and Order must be made available to the public.

11-13-08
Date:

Kemp Morton
Kemp Morton, Chair
WV Ethics Commission

10-30-08
Date:

Henry Paul
Henry Paul, Respondent

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