

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

ERIC L. HODGES

COMPLAINT NO. VCRB 2015-116

FINAL DECISION AND ORDER

This matter came for consideration before the West Virginia Ethics Commission during its regularly scheduled meeting on June 1, 2017, following a public hearing conducted before the Commission's duly appointed hearing examiner on March 21, 2017.

This proceeding arises under the West Virginia Governmental Ethics Act, W. Va. Code § 6B-2-1 through 6B-3-11 ("Ethics Act"). A Verified Complaint was filed against Eric L. Hodges, former Assessor of Wayne County, West Virginia, on August 26, 2015, which alleged that he had violated the Ethics Act. The Ethics Commission is the duly authorized state agency to enforce the Ethics Act and conduct hearings pursuant to the provisions of W. Va. Code § 6B-2-4.

The Ethics Commission's Probable Cause Review Board, following an investigation, entered an Order on December 30, 2016, finding probable cause to believe that Respondent Eric L. Hodges ("Respondent" or "Hodges") violated W. Va. Code § 6B-2-5(b) and ordering that a Statement of Charges be prepared and that a public hearing be scheduled.

A Statement of Charges and Notice of Hearing was issued on December 30, 2016. The hearing on the Complaint was held in Charleston, West Virginia, on March 21, 2017, with H.F. Salsbery presiding as the independent Hearing Examiner. At the hearing, the Commission was represented by its Deputy General Counsel Meridith O. Johnstone. Respondent did not appear at the hearing and was not represented by counsel at the hearing. The Commission presented as witnesses Scott White, Kristy Watts, James Boggs, Wendy Maynard and Robert Pasley and introduced 14 exhibits into the record. A certified court reporter created a stenographic record of the hearing and a transcript of the proceedings.

The Commission, with all seven of the Commission members present and voting, considered the record and the Hearing Examiner's "Proposed Findings of Fact and Conclusions of Law" [*hereinafter* "*Hearing Examiner's Recommendation*"]. Prior to the meeting, Commission members were provided with the hearing transcript; the hearing exhibits; the Ethics Commission's "Proposed Findings of Fact and Conclusions of Law;"

the Commission's "Amended Proposed Findings of Fact and Conclusions of Law;" the Hearing Examiner's "Proposed Findings of Fact and Conclusions of Law" and the Ethics Commission's "Brief in Support of Hearing Examiner's Proposed Findings of Fact and Conclusion of Law."

The Hearing Examiner's Recommendation is attached hereto and is incorporated herein by reference.

FINDINGS OF FACT

The Commission adopts each of the 38 "Findings of Fact" set forth in the Hearing Examiner's Recommendation. The Commission hereby adopts those proposed Findings of Fact, Conclusions of Law and arguments advanced by the parties that were expressly adopted in the Hearing Examiner's Recommendation. To the extent that the following Findings or Conclusions are consistent with those advanced by the parties and adopted in the Hearing Examiner's Recommendation, the same are adopted. Conversely, to the extent that the same are inconsistent with these Findings and Conclusions, they are rejected. To the extent that these Findings or Conclusions are inconsistent with any other proposed Findings and Conclusions submitted by the parties, the same are hereby adopted and, conversely, to the extent that the same are inconsistent with these Findings and Conclusions, they are rejected. To the extent that the testimony of any witness is not in accord with these Findings and Conclusions, the testimony is not credited. Any proposed Finding of Fact, Conclusion of Law or argument proposed and submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

CONCLUSIONS OF LAW

The Commission adopts each of the Hearing Examiner's eight recommended "Conclusions of Law."

RECOMMENDED PENALTIES

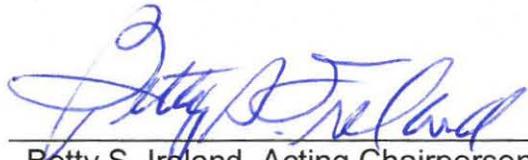
The Commission does not adopt the Hearing Examiner's section entitled "Recommended Penalties."

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the West Virginia Ethics Commission ORDERS the following sanctions against Eric L. Hodges:

1. A public reprimand shall be issued against Respondent Eric L. Hodges;
2. Respondent Eric L. Hodges shall pay a fine of \$10,000 to the West Virginia Ethics Commission on or before August 1, 2017;
3. Respondent Eric L. Hodges shall reimburse the West Virginia Ethics Commission the amount of \$1,908.55 for the actual costs of prosecuting his violations of the Ethics Act on or before August 1, 2017;
4. Before holding a public service position or employment in the future, Respondent Eric L. Hodges shall complete training on the West Virginia Ethics Act and shall notify the Commission in writing of his completion of the training.

This Order was entered on the 1st day of June, 2017.



Betty S. Ireland, Acting Chairperson
West Virginia Ethics Commission

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

ERIC L. HODGES

Complaint No. VCRB 2015-116

Former Wayne County Assessor,
Respondent.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned Hearing Examiner submits the following "Proposed Findings of Fact and Conclusions of Law."

FINDINGS OF FACT

1. The Respondent, Eric L. Hodges ("Respondent" or "Hodges"), at all pertinent times herein served as the duly elected Assessor of Wayne County, West Virginia.

2. The Wayne County Commission President, Robert Pasley, testified that the Wayne County Commission at all pertinent times herein was a participant in the Local Government Purchasing Card ("P-Card") Program managed by the West Virginia State Auditor's Office. (Hr'g Tr. 132-133, March 21, 2017; see *also* Hr'g Tr. 20-23, 47-48, 101-102).

3. Pasley additionally testified that the Wayne County Commission assigned Kristy Watts and James Boggs to serve as P-Card Coordinators pursuant to the Local Government P-Card Program. (Hr'g Tr. 132; see *also* Hr'g Tr. 46, 72-73).

4. Scott White, a local government purchasing card operation specialist with the West Virginia State Auditor's Office, testified that approval of a request for a monthly credit limit increase on a P-Card by the West Virginia State Auditor's Office only requires that a P-Card Coordinator make the request and that the local government entity have sufficient funds in its overall account to satisfy the additionally requested funds. (Hr'g Tr. 20, 32).

5. Scott White, Robert Pasley, Kristy Watts and James Boggs testified that the Respondent possessed a P-Card in 2015 pursuant to his holding the public office of Assessor of Wayne County. (Hr'g Tr. 23, 48, 73, 133; *see also* Ex. 7).

6. The Respondent signed a West Virginia Local Government Purchasing Cardholder Agreement on May 28, 2009, which stated, in relevant part, "I understand that the purchasing card is solely for official business of Local Government Entity, intended to facilitate the payment of goods and services for conducting official business within applicable activity limits and is not for my personal use." (Ex. 1 at 1 and 4).

7. Kristy Watts testified that on or about July 13, 2015, the Respondent called her requesting a credit limit increase on his P-Card stating that he was on a coal tax study in Webster County, West Virginia. Scott White testified that the request was approved by the West Virginia State Auditor's Office raising the monthly credit limit on the Respondent's P-Card from approximately \$2,000 to \$10,000. (Hr'g Tr. 30-33, 60-63, 73; Ex. 2).

8. James Boggs testified that on or about July 15, 2015, the Respondent called him requesting another credit limit increase on his P-Card. The Respondent similarly stated to Mr. Boggs that Respondent was on a coal tax study in Webster County to justify

the increase. Scott White testified that the request was approved by the West Virginia State Auditor's Office raising the monthly credit limit on the Respondent's P-Card from \$10,000 to \$12,500. (Hr'g Tr. 33-36, 74-77; Ex. 3 at 1-2).

9. James Boggs testified that the Respondent called him a second time on July 15, 2015, to request another credit limit increase on his P-Card. Boggs testified that the Respondent stated that he wished to increase the limit to \$15,000 so he would not have to request an increase again in the future. Scott White testified that the request was approved by the West Virginia State Auditor's Office raising the monthly credit limit on the Respondent's P-Card from \$12,500 to \$15,000. (Hr'g Tr. 34-37, 77-79).

10. Per Kristy Watts and James Boggs, the Respondent's requests for credit limit increases were unusual given the Respondent had rarely used the P-Card in the past and had requested that the monthly credit limit be raised on his P-Card from \$2,000 to \$15,000 over the span of two days. (Hr'g Tr. 54, 63-64, 74, 82-84).

11. Kristy Watts, James Boggs and Robert Pasley testified that a coal tax study was not performed on behalf of Wayne County. There is no evidence of record indicating that a coal tax study was ordered or otherwise performed by the Respondent on behalf of Wayne County. (Hr'g Tr. 61, 81-82, 137-138).

12. James Boggs testified that due to concerns regarding the Respondent's requested credit limit increases, he contacted the President of the Wayne County Commission and sent a letter to the Respondent requesting copies of all receipts for transactions posted to the Respondent's P-Card during the statement period from July 6, 2015, to July 22, 2015. The letter additionally reminded the Respondent that he signed a purchase cardholder agreement which requires that the P-Card be used for conducting

official business and not for the Respondent's personal use. (Hr'g Tr. 83-85; Ex. 1 at 1-3).

13. Scott White testified that the West Virginia State Auditor's Office receives authorization and decline reports for the P-Cards each day regarding authorizations and declines for the previous day. (Hr'g Tr. 26).

14. Scott White testified that he received unusual decline reports regarding the Respondent's P-Card in 2015. White testified that the decline reports for the Respondent's P-Card were unusual because the P-Card was declined numerous times at a business in Greenbrier County, West Virginia, out of the Wayne County area. The P-Card was also declined on several other occasions including being temporarily blocked due to an attempt to use the P-Card at an ATM. (Hr'g Tr. 27-29, 37-41).

15. White testified that he subsequently contacted Wayne County P-Card Coordinator, Kristy Watts, regarding the unusual activity on the Respondent's P-Card. (Hr'g Tr. 29-30).

16. Kristy Watts testified that she received multiple decline notices from the West Virginia State Auditor's Office in July 2015 regarding the Respondent's P-Card including an e-mail from Scott White which contained an attached statement for the Respondent's P-Card showing transactions from June 27, 2015, through July 28, 2015. (Hr'g Tr. 53-58; Ex. 4).

17. Watts testified that every transaction present on the statement looked unusual which included expenditures at Rite Aid Stores, the Addison Visitors Center, Main Street Café, G&R IGA and Bergoo Creek Bait and Tackle. The unusual expenditures on the

Respondent's P-Card statement totaled \$14,137.56. (Hr'g Tr. 58-60, 64-65; Ex. 4; Ex. 5).

18. Robert Pasley testified that he was notified of the unusual activity on the Respondent's P-Card and was presented with the decline reports. Pasley testified that being familiar with the area in which Respondent was using the card, and that the expenditures listed on the Respondent's P-Card Statement could not be legitimate expenses for the county due to where the purchases were made and the amounts spent. (Hr'g Tr. 133-135).

19. Pasley testified that the Respondent called him at his home from a phone number in Webster County and discussed the expenditures. Pasley testified that after the Respondent told Pasley he was in Webster County, Pasley notified the Respondent that he was abusing his P-Card. Pasley testified that the Respondent stated he was going to pay the money back. (Hr'g Tr. 138-140).

20. On July 23, 2015, Pasley sent a letter to Scott White requesting that the Respondent's P-Card be indefinitely suspended pending further investigation. (Hr'g Tr. 41-42; Ex. 6).

21. Pasley additionally testified that he sent a letter to the Office of the Wayne County Prosecuting Attorney on July 23, 2015, indicating that the County Commission believed that the Respondent was in direct violation of the West Virginia Local Government Purchasing Cardholder agreement and further requesting an investigation of the Respondent's usage of the P-Card. (Hr'g Tr. 135-137; Ex. 7).

22. James Boggs testified that on July 23, 2015, the Respondent contacted the Office of the Wayne County Commission stating that he intended to make restitution

regarding his P-Card expenditures and further that a check would be delivered later that day. No check was received by the Wayne County Commission on July 23, 2015. (Hr'g Tr. 89-90; see also Hr'g Tr. 139-140).

23. James Boggs and Robert Pasley testified that on or about August 6, 2015, chief deputy assessor Wendy Maynard brought a cashier's check to the Commission's chambers in the amount of \$14,137.56. The remitter listed on the check was Faye M. Earley, and the check included a memo reading, "Full Payment on Acct Purchase Card for Eric L. Hodges." (Hr'g Tr. 90-92, 100, 140; Ex. 8 at 1).

24. James Boggs testified that the Wayne County Commission subsequently prepared a receipt dated August 6, 2015, acknowledging receipt of the check described in the foregoing paragraph. The receipt additionally stated that the Wayne County Commission did not acknowledge the check as payment in full and further that the check would not be deposited until counsel advised the Commission to deposit the check. James Boggs testified that the receipt was presented to the Respondent. (Hr'g Tr. 93-94, Ex. 8 at 2).

25. Wendy Maynard, James Boggs and Robert Pasley testified that in addition to the P-Card, Respondent possessed another credit card issued by Chase Bank ("Chase card") pursuant to his position as Assessor of Wayne County in July 2015. (Hr'g Tr. 95, 102, 140-141).

26. Wendy Maynard testified that the Wayne County Assessor's Office had a Chase Capital Business credit account and issued Chase cards to approximately four or five of its employees in 2012. Wendy Maynard, James Boggs and Robert Pasley testified that the Chase cards were maintained by the Assessor's Office, separate from the County

Commission. Pasley further testified that purchases made with the Chase cards did not require approval by the County Commission. Maynard and Boggs testified that purchases made with the Chase cards were paid from the Assessor's Evaluation Fund. (Hr'g Tr. 95, 103, 107-108, 140-141).

27. Maynard testified that the Assessor's Evaluation Fund is supplied with monies from tax collections and is to be used for the operations of the Assessor's Office including salaries and office-related expenses. Maynard testified that she monitored the expenditures related to the Chase cards and submitted expenditures for payment. (Hr'g Tr. 105, 108-109).

28. Maynard testified that the Chase cards were to be used for office-related purchases and further that each employee who received a Chase card was told the guidelines for using the card. Maynard testified that the verbal guidelines included a prohibition on using the card for personal expenses. Maynard testified that to aid in preventing accidental personal purchases with the Chase cards, they were labeled "Office Card, Do Not Use." (Hr'g Tr. 103-104, 107).

29. Maynard testified that there was unusual activity on the Respondent's Chase card from the middle of July 2015 through the first part of August 2015. Maynard testified that during this time the Respondent informed Maynard by telephone that he requested from Chase an increase on the credit limit of the Chase card and further represented that he will need to "pay some stuff back." Maynard testified that the Respondent then instructed Maynard to check with Chase Bank regarding the requested increase. Maynard testified that the request for increase was approved from \$15,000 to \$50,000. (Hr'g Tr. 110-114; Ex. 9 at 3).

30. Maynard testified that after the conversation with the Respondent regarding the credit limit increase, she viewed the online Chase account of the Wayne County Assessor's Office and saw several expenditures that were not normal. Maynard testified that she spoke with another employee in the Assessor's Office regarding the expenditures and concluded that they should "do what the boss says." (Hr'g Tr. 112-113).

31. Maynard testified that the statement from Chase Bank associated with the Respondent's Chase card contained several unusual expenditures during July and August 2015. Maynard testified that the unusual expenditures included those from Friendly's, Classic Liquors, G & R IGA, Rite Aid, Down Home Grill, Dollar General, Elk Springs Resort, Mid-State Marina, Walmart, Bergoo Creek Bait and Tackle, Backyard Outfitters, Addison Visitors Center, Charlie's Harley Davidson, Tri-State Pawn & Jewelry, Corner Liquor and Wine, Smoke Time Sams, Living Art Studios and Lavalette Food Fair. (Hr'g Tr. 115-123; Ex. 9 at 1-12).

32. Based upon her experience of approximately 36 years in the Wayne County Assessor's Office, Maynard testified that in her opinion the expenditures on the statement not associated with gasoline were not a proper use of the Respondent's Chase card. Excluding the expenditures for all the auto-related expenses, the improper expenditures on the Respondent's Chase card statement totaled at minimum \$42,290.29. (Hr'g Tr. 100, 125-126; Ex. 9).

33. Maynard testified that she spoke with the Respondent on August 21, 2015, the same day the Respondent's Chase card statement reflects multiple transactions made at Charlie's Harley Davidson, including expenditures of \$8,200 and \$1,666.50. Maynard testified that the Respondent told her he was going to Bergoo, West Virginia,

that day and subsequently sent Maynard a picture of a motorcycle. Maynard testified that she is sure that it was the Respondent who made the charges on the Respondent's Chase card. (Hr'g Tr. 121, 129-130; Ex. 9 at 5).

34. James Boggs testified that the Respondent resigned as Assessor of Wayne County on October 9, 2015. (Hr'g Tr. 94).

35. Pursuant to a plea agreement, the Respondent pleaded guilty to two criminal charges of embezzlement in the Circuit Court of Wayne County, West Virginia, on January 21, 2016. Kristy Watts, James Boggs, Wendy Maynard and Robert Pasley testified that the factual basis underlying the criminal charges is the same as that which underlies the above-styled Complaint. (Hr'g Tr. 69-70, 95-96, 127-128, 141; Ex. 10-14).

36. Pursuant to the plea agreement, the Respondent agreed to pay restitution to the Wayne County Commission in the amount of \$58,007 and further agreed to forfeit any right, title, interest and ownership to any items that were purchased illegally by him with county funds. The agreement further provided that such items may be sold by the Wayne County Commission with the proceeds to be credited to the amount restitution owed by the Respondent. The Respondent additionally agreed to waive and forfeit any and all bonuses and/or compensation that may have been owed to him by the Wayne County Commission with the value of any said amounts to be credited toward restitution. (Ex. 12 at 2).

37. James Boggs and Robert Pasley testified that the Wayne County Commission is currently receiving payments of \$300 per month from the Respondent towards restitution. Boggs and Pasley additionally testified that the Wayne County Commission sold an illegally purchased ATV for approximately \$20,000 and anticipates selling

additional items illegally purchased by Respondent to go toward the restitution amount. (Hr'g Tr. 96-98, 142-144).

38. On March 21, 2017, a hearing on the above-styled Complaint was held at the offices of the West Virginia Ethics Commission, 210 Brooks Street, Charleston, West Virginia. The Respondent was not present at the hearing after receiving notice of the date, time and place of the hearing. (Hr'g Tr. 5-9, 15-17; Exs. A & B; Stmt. of Charges and Notice of Hr'g, December 30, 2016).

CONCLUSIONS OF LAW

1. The Respondent Eric L. Hodges, after being notified of the date, time and place of the hearing that occurred on March 21, 2017, waived his right to be present at the hearing when the Respondent did not appear at the hearing and made no prior showing of good cause. 158 CSR 17-7.19.

2. The Respondent Eric L. Hodges, during his tenure as Assessor of Wayne County, West Virginia, was a public official within the meaning of the West Virginia Governmental Ethics Act. W. Va. Code § 6B-1-3(k).

3. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act by West Virginia public officials including the Respondent. W. Va. Code §§ 6B-1-1 through 6B-2B-6.

4. Public officials are prohibited from knowingly and intentionally using their public office for private gain. W. Va. Code § 6B-2-5(b).

Count One

5. The evidence proves beyond a reasonable doubt that the Respondent was issued a P-Card under the State of West Virginia's Local Government Purchasing Program pursuant to his holding the public office of Assessor of Wayne County.

6. The evidence proves beyond a reasonable doubt that the Respondent used his public office for his own private gain in violation of W. Va. Code § 6B-2-5(b)(1) by using the West Virginia State Auditor's Office-issued P-Card for personal purchases and expenditures that did not benefit the Wayne County Assessor's Office.

Count Two

7. The evidence proves beyond a reasonable doubt that the Wayne County Assessor's Office provided the Respondent with a Chase Capital Business credit card pursuant to the Respondent holding the public office of Assessor of Wayne County.

8. The evidence proves beyond a reasonable doubt that the Respondent knowingly and intentionally used his public office for his own private gain in violation of W. Va. Code § 6B-2-5(b)(1) by using the Wayne County Assessor's Office Chase Capital Business credit card for personal purchases and expenditures that did not benefit the Wayne County Assessor's Office.

RECOMMENDED PENALTIES

1. In light of Respondent's deliberate and intentional misuse of public funds, i.e. the two credit cards in question, the undersigned recommends that the Respondent be fined Five Thousand Dollars (\$5,000) per violation for a total of Ten Thousand Dollars (\$10,000).

2. In addition to the fines set forth in paragraph 1, immediately hereinabove, the undersigned recommends that the Respondent be required to repay the proper public entity the entire amount which he was found to have stolen with interest at the statutory rate.

3. In addition to the fines set forth in paragraph 1, immediately hereinabove, the undersigned recommends that the Respondent pay the West Virginia Ethics Commission the costs of this prosecution.

Submitted by:



H. F. Salsbery, Hearing Examiner

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

ERIC L. HODGES

COMPLAINT NO. VCRB 2015-116

CERTIFICATE OF SERVICE

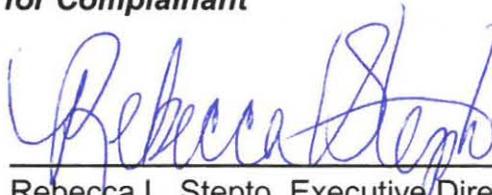
I, Rebecca L. Stepto, Executive Director of the West Virginia Ethics Commission, certify that I mailed a true and complete copy of the foregoing **FINAL DECISION AND ORDER** via regular United States Mail, postage prepaid, and via certified, return receipt requested, United States Mail, postage prepaid, on June 1, 2017, to:

Eric L. Hodges
73 Neighbor Lane
Wayne, WV 25570

Eric L. Hodges
727 Right Fork Wilson Creek Road
Wayne, WV 25570-5986
Respondent

and via email and hand delivery to:

Derek A. Knopp, Staff Attorney
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