

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

WEST VIRGINIA ETHICS COMMISSION,

Complainant,

v.

CIC 2014-014

EUGENE R. THORN,
Former Employee of the West Virginia Wildlife Center,
West Virginia Division of Natural Resources,

Respondent.

STATEMENT OF CHARGES AND NOTICE OF HEARING

The Probable Cause Review Board of the West Virginia Ethics Commission entered an Order on April 25, 2016, finding that there is probable cause to believe that Eugene R. Thorn, the Respondent ["Respondent"] in the above-referenced Complaint, violated the provisions of W.Va. Code § 6B-2-5 which state, in relevant part:

(b) 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.

...

(d)(1) 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: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body ...

...

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a

member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed one thousand dollars in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than five thousand dollars.

(3) If a public official has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest.

The Probable Cause Order found that Respondent Thorn had a prohibited interest in the profits or benefits of a contract over which his public position gave him control in violation of W.Va. Code § 6B-2-5(d)(1). The contract was between Ulrika M. Browning (“Browning”) and the Division of Natural Resources (“DNR”) for the operation of the DNR’s Wildlife Center gift shop, snack bar and admission booth. Prior to the contract, Respondent’s wife, Sandra Thorn, and Browning had agreed to share the net profits from the operation of the gift shop in exchange for Sandra Thorn working at the gift shop.

The Order also found that Sandra Thorn had a financial interest in Browning’s contract because Sandra Thorn either loaned \$5,000 to or invested it in Browning’s business endeavor at the gift shop to pay for a surety bond required by the contract. Due

to Respondent's financial interest in the contract and participation in the contract on behalf of the DNR, he was in violation of W.Va. Code § 6B-2-5(d).

The Order also found that the Respondent used his public position for his and his wife's private gain to influence Browning to immediately repay the \$5,000 and 18 percent interest thereon in violation of W.Va. Code § 6B-2-5(b)(1).

The Order directed that this Statement of Charges be prepared and that the matter be scheduled for a public hearing to determine the truth or falsity of the charges.

STATEMENT OF CHARGES

Jurisdiction

1. Respondent Thorn, at all pertinent times herein, was employed as a Wildlife Biologist at the West Virginia State Wildlife Center ("Wildlife Center"), a zoological facility in French Creek which is operated by the DNR's Wildlife Resources Section.

2. Respondent accordingly was a "public employee" as defined in the West Virginia Governmental Ethics Act at W.Va. Code § 6B-1-3(j).

3. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act committed by West Virginia public employees such as the Respondent. W. Va. Code § 6B-1-1 through § 6B-2-10.

Facts

4. The Wildlife Center has a gift shop on its premises. As part of the Respondent's job duties, he oversaw and supervised the operations of the gift shop.

5. In the fall of 2012, the Wildlife Center began the process of bidding out a contract for the operation of the Wildlife Center's gift shop, snack bar and admission booth (hereinafter referred to as "gift shop contract"). The gift shop contract provided that the successful bidder would receive 85 percent of the gross sales from the gift shop and 15 percent of the concessionaire sales and admission fees.

6. The Director of the DNR advertised the gift shop contract in local newspapers and Respondent contacted possible vendors.

7. The Respondent and Sandra Thorn discussed the gift shop contract with Browning at a Christmas craft show in Buckhannon in November 2012. Browning was at that time their acquaintance and a vendor at the craft show. Browning expressed to Respondent her possible interest in bidding on the gift shop contract.

8. Respondent sent Browning a bid package based upon their conversation.

9. Respondent had discussions with, and sent bid packages to, three other persons who had expressed interest in the gift shop contract.

10. After the craft show discussion and before the contract was awarded in January 2013, Browning, Respondent and Sandra Thorn discussed Sandra Thorn's involvement in the operation of the gift shop. Before Browning was awarded the contract, she and Sandra Thorn verbally agreed that if Browning was awarded the contract, Sandra Thorn would work for Browning at the gift shop and they would equally split the gift shop's net profits, if any.

11. The DNR Director formed a committee, which included the Respondent, to interview the bidders for the gift shop contract. The committee interviewed Browning, who was the sole bidder, in January 2013.

12. The DNR Director awarded the contract to Browning on the condition that she satisfy the \$5,000 surety bond provision of the contract. After Browning was unsuccessful in purchasing a surety bond from a bonding company, Sandra Thorn offered to provide Browning \$5,000 to use as security for the contract. Respondent and Sandra Thorn did not clarify whether the \$5,000 was a loan, and no documents describing the nature of that transaction were created.

13. On April 26, 2013, Sandra Thorn wrote a check for \$5,000 from hers and Respondent's joint checking account to purchase a cashier's check made payable to DNR to be used as Browning's security for the gift shop contract.

14. The gift shop failed to immediately earn net profits. Sandra Thorn told Browning that she needed to pay her \$100 for each day she worked at the gift shop or that Sandra Thorn would need to get a paying job. Browning then paid Sandra Thorn \$100 per day for each day she worked at the gift shop. Sandra Thorn worked at the gift shop for approximately one and one-half months.

15. Sandra Thorn and Browning subsequently had a disagreement and in June 2013, Sandra Thorn stopped working at the gift shop. Almost immediately thereafter, in August 2013, Respondent Thorn presented Browning with a written payment plan which required Browning to make weekly payments in the amount of \$500 to repay the \$5,000 and to pay 18 percent interest (which totaled \$630) for a total amount of \$5,630.

16. Browning had not agreed to pay 18 percent interest, but felt pressured to pay it because the Respondent oversaw and supervised the gift shop on behalf of the DNR.

17. On October 18, 2013, Browning completed payment of the \$5,630, which consisted of the \$5,000 and the 18 percent interest required by Respondent's payment plan schedule.

18. The Respondent retired from his employment with DNR in October 2013.

Count One

19. The allegations set forth in paragraphs 1 through 18 are realleged and incorporated herein by reference.

20. It is hereby charged that Respondent Eugene R. Thorn had a prohibited interest in the profits or benefits of a contract over which his public position gave him control in violation of W.Va. Code § 6B-2-5(d)(1).

Count Two

21. The allegations set forth in paragraphs 1 through 20 are realleged and incorporated herein by reference.

22. Respondent Eugene R. Thorn's wife, Sandra Thorn, had a financial interest in Browning's contract because Sandra Thorn either loaned \$5,000 to or invested it in Browning's business endeavor at the gift shop to pay for a surety bond required by the contract.

23. It is hereby charged that due to Respondent's financial interest in the contract and participation in the contract on behalf of the Division of Natural Resources, he was in violation of W.Va. Code § 6B-2-5(d).

Count Three

24. The allegations set forth in paragraphs 1 through 23 are realleged and incorporated herein by reference.

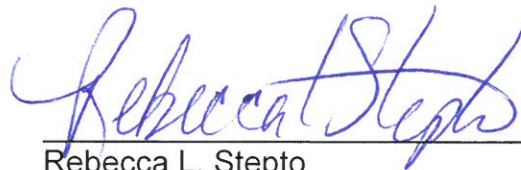
25. It is hereby charged that the Respondent used his public position for his and his wife's private gain to influence Browning to immediately repay the \$5,000 loan or investment with 18 percent interest in violation of W.Va. Code § 6B-2-5(b)(1).

NOTICE OF HEARING

Notice is hereby given that a PUBLIC HEARING will be held on **July 18th and 19th, 2016**, at the offices of the West Virginia Ethics Commission, 210 Brooks Street, Third Floor Conference Room, Charleston, West Virginia, beginning at 10:00 a.m. to determine the truth or falsity of the charges herein. The hearing will be continued until completed.

In accordance with W.Va. Code § 6B-2-4 and 158 CSR § 17-4.1, Jennifer N. Taylor will serve as the independent hearing examiner to preside at the hearing. The record compiled by the hearing examiner will be submitted to the members of the Ethics Commission for a final decision.

Dated: April 26, 2016



Rebecca L. Stepto
Executive Director

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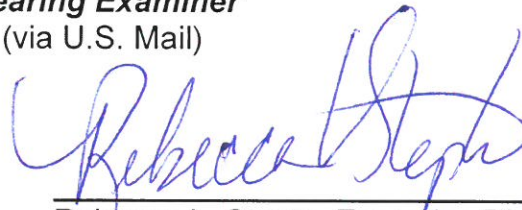
CERTIFICATE OF SERVICE

I, Rebecca L. Stepto, Executive Director of the West Virginia Ethics Commission, do hereby certify that on the 26th day of April, 2016, I served a true and complete copy of the foregoing **STATEMENT OF CHARGES AND NOTICE OF HEARING** upon:

John H. Tinney, Jr.
Hendrickson & Long, PLLC
214 Capitol Street
Charleston, WV 25301
Counsel for Respondent
(via certified mail, return receipt requested)

and

Jennifer N. Taylor, Esquire
1118 Kanawha Boulevard, East
Charleston, WV 25301
Hearing Examiner
(via U.S. Mail)



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