

COPY

2011 DEC 23 PM 2:25

CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES  
(Other than Domestic Relations)

FILED  
2011 DEC 23 PM 9:32  
KATHY L. BROWN, CLERK  
CANTON, WEST VIRGINIA  
CIRCUIT COURT

In the Circuit Court, Kanawha County, West Virginia

I. CASE STYLE:

Plaintiff(s)

State of West Virginia  
ETHICS COMMISSION

Case # 11-MISC-620

Judge: Jennifer Bailey

vs.

Defendant(s)

Roger Wolfe  
Street  
524 22<sup>nd</sup> St Dunbar, WV 25064  
City, State, Zip

Days to Answer

30

Type of Service

certified mail

Street

City, State, Zip

Street

City, State, Zip

Street

City, State, Zip

Original and 2 copies of complaint enclosed/attached.

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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II. TYPE OF CASE:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> General Civil<br><input type="checkbox"/> Mass Litigation<br>(As defined in T.C.R. Rule XIX (c)) <ul style="list-style-type: none"> <li><input type="checkbox"/> Asbestos</li> <li><input type="checkbox"/> Carpal Tunnel Syndrome</li> <li><input type="checkbox"/> Diet Drugs</li> <li><input type="checkbox"/> Environmental</li> <li><input type="checkbox"/> Industrial Hearing Loss</li> <li><input type="checkbox"/> Silicone Implants</li> <li><input type="checkbox"/> Other: _____</li> </ul> <input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ<br><input type="checkbox"/> Other: _____ | <input type="checkbox"/> Adoption<br><input type="checkbox"/> Administrative Agency Appeal<br><input type="checkbox"/> Civil Appeal from Magistrate Court<br><input type="checkbox"/> Miscellaneous Civil Petition<br><input type="checkbox"/> Mental Hygiene<br><input type="checkbox"/> Guardianship<br><input type="checkbox"/> Medical Malpractice |
|--|--|

III. JURY DEMAND:  Yes  No

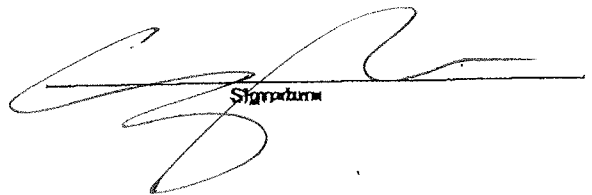
CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): \_\_\_\_\_ / \_\_\_\_\_

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY?  YES  NO  
 IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: \_\_\_\_\_

Attorney Name: C. Joan Parker  
 Firm: WV Ethics Commission  
 Address: 210 Brooks Street Charleston WV 25301  
 Telephone: 304-558-0664  
 Dated: 12/20/11

Representing:  
 Plaintiff  Defendant  
 Cross-Complainant  Cross-Defendant

  
 Signature

Proceeding Without an Attorney

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA  
ETHICS COMMISSION,  
Petitioner,

COPY

v.

Civil Action# 11-MISC-620  
Bailey

ROGER WOLFE,  
Respondent.

FILED  
2011 DEC 22 AM 9:32  
CLERK  
KANAWHA CO. CIRCUIT COURT

PETITION TO ENFORCE FINAL ORDER  
OF WEST VIRGINIA ETHICS COMMISSION

The West Virginia Ethics Commission, by counsel, C. Joan Parker, General Counsel to the Commission, pursuant to West Virginia Code §6B-2-4(r), respectfully represents to the Court that:

1. The West Virginia Ethics Commission is empowered to enforce the provisions of the West Virginia Ethics Act, §6B-5-1, *et seq.*, and is specifically authorized in W.Va. Code §6B-2-4(r)(3) to apply to the Kanawha County Circuit Court for enforcement of sanctions.
2. The Circuit Court of Kanawha County is the proper venue for the action pursuant to W.Va. Code §6B-2-4(r)(3).
3. On the 14th day of July 2011, the Ethics Commission entered its final order, attached as Exhibit 1, imposing the following sanctions upon the respondent:

(1) It is hereby Ordered that Respondent Wolfe is publicly reprimanded;

(2) It is hereby Ordered that Respondent Wolfe make restitution to the City of Dunbar in the amount of \$5,757.47.

(3) It is hereby Ordered that Respondent Wolfe pay a fine of \$15,000. The fine shall be paid within 90 days of the entrance of this Order. The check or money order is to be made payable to the State of West Virginia.

(4) It is hereby Ordered that Respondent Wolfe reimburse the West Virginia Ethics Commission \$5,698.07 for its actual costs of investigating and prosecuting this complaint.

(5) It is hereby Ordered that if Respondent Wolfe is, in the future, elected or appointed to public office or accepts public employment, that he cease and desist from expending public funds for unauthorized personal expenses.

4. The Respondent has failed to comply with the Commission's Order by not paying the specified fine, restitution and reimbursement to the Ethics Commission.
5. The Respondent did not appeal this Order as permitted by W. Va. Code §6B-2-4(t), upon the grounds set forth in W. Va. Code §29A-5-4, and the time for filing such an appeal has passed.

WHEREFORE, the West Virginia Ethics Commission requests that this Court:

1. Grant the West Virginia Ethics Commission a judgment against the Respondent, Roger Wolfe, in the amount of \$ 26,455.54, plus interest on the judgment to the extent allowed by law;
2. Enter an Order requiring Respondent, Roger Wolfe, to pay the amount of \$ 26,455.54, plus interest, previously ordered by the Ethics Commission, as set forth in Exhibit 1;

3. Award attorney fees, costs and expenses of bringing this action against the Respondent; and
4. Award such further relief as this Court may deem appropriate.

WEST VIRGINIA ETHICS COMMISSION  
Petitioner,

By Counsel,

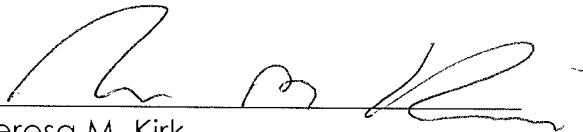


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C. Joan Parker  
General Counsel  
210 Brooks St., Suite 300  
Charleston, WV 25301  
304-558-0664  
WV Bar ID No. 4360

State of West Virginia  
County of Kanawha, to – wit:

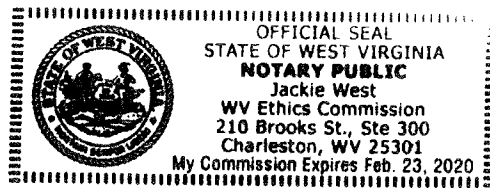
I, Theresa M. Kirk, Executive Director of the West Virginia Ethics Commission, being first duly sworn, state that the information contained in the foregoing Petition to Enforce Sanctions is true and accurate to the best of my knowledge and belief.

  
\_\_\_\_\_  
Theresa M. Kirk  
Executive Director

Taken, sworn to, and subscribed before me this 20th day of December, 2011.

My commission expires Feb. 23, 2020.

Jackie West NOTARY PUBLIC



BEFORE THE STATE OF WEST VIRGINIA  
ETHICS COMMISSION

IN RE:

Complaint No. VCRB 2008-20

Respondent Roger Wolfe, former Mayor, City of Dunbar

COPY

FINAL DECISION AND ORDER

On December 3, 2008, Tom Bailey, Connie Boardman, Fred Chiles, Janet Nelson, Fred Slaymaker and Michelle Wilshere filed a complaint against Roger Wolfe, former Mayor, City of Dunbar. In accordance with W.Va. Code § 6B-2-4, the Complaint was referred to the Commission's Probable Cause Review Board for consideration.

On January 10, 2010, the Review Board entered an Order finding probable cause to believe that Respondent Wolfe violated W.Va. Code § 6B-2-5(b). Thereafter, a Public Hearing was duly noticed and conducted on October 27, 2010, at the Offices of the West Virginia Ethics Commission in Charleston, West Virginia before Hearing Examiner Priscilla Gay. On May 23, 2011, Hearing Examiner Gay issued her Recommended Decision.

Having reviewed the Recommended Decision, and the administrative record, the Commission hereby finds that the Complainants have proven beyond a reasonable doubt that Respondent Wolfe committed three violations of the Ethics Act, W.Va. Code § 6B-2-5(b), by using his public position and public resources in seeking and obtaining reimbursement for his meals, mileage, and phone service, both residential and cellular, in the total amount of \$5,757.47, without authorization and authority. The Commission further finds beyond a reasonable doubt that the facts alleged in the complaint are true and constitute a material violation of the Ethics Act. W.Va. Code § 6B-2-4(r). In support

of this conclusion, the Commission hereby expressly adopts and incorporates the Hearing Examiner's Recommended Decision.

Having found beyond a reasonable doubt that the Respondent committed three violations of W.Va. Code § 6B-2-5(b), and that the violations were material, the Commission hereby imposes the following sanctions:

(1) It is hereby **Ordered** that Respondent Wolfe is publicly reprimanded;

(2) It is hereby **Ordered** that Respondent Wolfe make restitution to the City of Dunbar in the amount of \$5,757.47.

(3) It is hereby **Ordered** that Respondent Wolfe pay a fine of \$15,000.00. The fine shall be paid within 90 days of the entrance of this Order. The check or money order is to be made payable to the State of West Virginia.

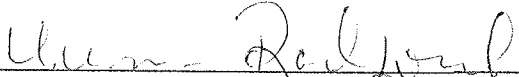
(4) It is hereby **Ordered** that Respondent Wolfe reimburse the West Virginia Ethics Commission \$ 5,698.07 for its actual costs of investigating and prosecuting this complaint.

(5) It is hereby **Ordered** that if Respondent Wolfe is, in the future, elected or appointed to public office or accepts public employment, that he cease and desist from expending public funds for unauthorized personal expenses.

A copy of the Recommended Decision is attached hereto and made part of this Final Decision and Order.

It is so **ORDERED**.

Entered this 14<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
Drema Radford, Acting Chairperson  
West Virginia Ethics Commission



BEFORE THE STATE OF WEST VIRGINIA

ETHICS COMMISSION

COPY

2011 HV 24 E112:13

IN RE:

RESPONDENT ROGER WOLFE

COMPLAINT NUMBER: VCRB 2008-20

RECOMMENDED DECISION

A hearing commenced on October 27, 2010, on an alleged violation of the West Virginia Governmental Ethics Act by Respondent Roger Wolfe and concluded on October 29, 2010, following three days of testimony. At the close of the hearing a briefing schedule was set. The record was closed after receipt of the transcripts and all briefs, and the matter considered submitted for decision on February 15, 2011.

PROCEDURAL HISTORY

An alleged violation of the West Virginia Governmental Ethics Act ("Ethics Act") by Roger Wolfe, Mayor of Dunbar, was brought to the West Virginia Ethics Commission ("Ethics Commission") by way of a verified complaint filed on December 2, 2008, by six City of Dunbar Council members. Thereafter, in accordance with W. Va. Code §6B-2-4, the complaint was referred to the Probable Cause Review Board. A Notice of Investigation was issued and an investigation followed. On January 20, 2010, the members of the Probable Review Board, by unanimous vote of those present, entered an Order finding probable cause to believe that Respondent Roger Wolfe violated W. Va. Code §6B-2-5 by knowingly and intentionally using his office for his own private gain and/or the private gain of others. The Statement of Charges was made up of four counts. Count IV was later dismissed by the Ethics Commission. Accordingly, the hearing was held on the remaining three counts set out in the Order. Each alleged Respondent Roger Wolfe obtained reimbursement from the City of Dunbar without authorization or authority for meals (Count I), personal mileage or personal vehicle use (Count II), and home telephone and personal cell phone expenses (Count III).

FINDINGS OF FACT

1. Roger Wolfe was elected Mayor of the City of Dunbar during June 2005 and was sworn into office on July 1, 2005. (T. 18, Vol. II) At the time of his election, Wolfe received disability retirement from a previous job. (T. 11, Vol. II) For the first six months after assuming office, Wolfe did not take his mayoral salary of \$38,000 annually. (T. 11, 88, Vol. II) Thereafter, he began taking a partial salary calculated to allow him to continue to receive his disability retirement income. (T. 124-125, Vol. II)

2. Ron Rowley was the Dunbar City Clerk from January 1993 through June 2009. (T. 17, Vol. II) According to Rowley, at a Finance Committee meeting he attended on an unknown date during 2005, there was discussion about paying expenses to Wolfe because he had incurred charges related to his duties as mayor for meals, mileage, and phone and was not taking any salary. (T. 87-88, Vol. II) Rowley believed that Council members Boardman, Wilshere, Nelson, Sullivan, Jenkins, and Coleman were present at the meeting along with Wolfe. (T. 131, Vol. II) Rowley further recollected that those present thought the idea had merit. (T. 88, Vol. II) Rowley clearly stated that after that Finance Committee meeting the issue was never presented to nor approved by Dunbar City Council. Only Council has authority to authorize and enforce city orders, rules, and ordinances consistent with the City Charter and the laws and constitution of the state of West Virginia. (CX 5, Section 5) Even so, a few weeks after the meeting, Wolfe turned in an expense account which was paid by the City Clerk. (T. 88, Vol. II)
3. Everette Sullivan was appointed to Council in 2005, and was elected to a second term. (T. 149, Vol. II) According to Sullivan, he attended a Finance Committee meeting in December 2005 where there was discussion of Wolfe's expenses. He remembered that the Finance Committee agreed that the mayor's expenses should be reimbursed primarily because he was not taking a salary. (T. 150, Vol. II) Sullivan believed that council members Boardman, Wilshere, Bailey and Nelson were also present at the meeting along with Wolfe. (T. 151, Vol. II) It should be noted that there is some confusion over the designation of this meeting as that of the Finance Committee or of City Council in the questioning of this witness. That confusion spilled over into the Commission's Proposed Finding of Fact 58. Even so, a reading of the complete testimony on the topic makes clear that Sullivan stated that Finance Committee and not Council reached an agreement on paying Wolfe's expenses. (T. 150-153, Vol. II) He did not recall whether the issue of reimbursing the mayor's expenses was ever presented to Council for approval. (T. 161-162, Vol. II)
4. Sullivan was the only Council member who testified there was agreement by the Finance Committee to pay the expenses. Boardman (T. 159, Vol. III), Bailey (T. 197 Vol. I), and Wilshire (T. 57, Vol. II) denied that occurred. Further, whether Jenkins was present for the 2005 Finance Committee meeting is in dispute. (T. 149, Vol. III) Even so, his recollection was that nothing was agreed to at the December 2005 Finance Committee meeting. (T. 176, Vol. II) Evelyn Coleman did not recall how Wolfe's expense payments came about. (T. 146-147, Vol. II)
5. The City Clerk is also City Treasurer. (CX 5) When Rowley assumed that position in 1993 he continued prior practices relating to the payment of city bills. (T. 28, Vol. II) Hand-cut checks, including expense reimbursements, were written in the office on a regular as needed basis without the invoices being submitted to Council for approval. (T. 9, 29, Vol. II)
6. Shawn Boggess has worked for the City Clerk since 1996 (T. 6, Vol. II) and was Rowley's assistant responsible for accounts payable. (T. 20, Vol. II) Boggess received completed expense forms itemizing Wolfe's expenses for meals, mileage, and phone. She was directed by the City Clerk to pay the expenses even though she questioned Rowley about the payments since previous

mayors had not been reimbursed for phones, cell phones, and meals. (T. 9, Vol. II, CX 34) She was never told that City Council had approved the payment of expenses. (T. 13, Vol. II)

7. The expenses were itemized on a form prepared, at Wolfe's request, by Pamela Reynolds, administrative assistant to the mayor, from July 2005 to January 11, 2006. (T. 228-229, Vol. I) Reynolds put an approval line on the form and told Wolfe that he could not approve his own expenses. (T. 231, Vol. I) The completed forms Boggess received and paid were signed as approved by Wolfe. (CX 34) Reynolds denied that Wolfe ever told her that Council had approved his expenses. (T. 246, 248, Vol. I)
8. Wolfe was reimbursed \$2,453.48 for meals. (CX 34, 35) Wolfe was accompanied by City department heads and/or City employees at many of the meals for which he was reimbursed. (T. 204-207, Vol. I, CX 34) Other meal expenses included multiple breakfasts and lunches that Wolfe apparently consumed alone. (CX 34) Wolfe's predecessors did not seek reimbursement for meals. (T. 201, 218, Vol. I; T. 18, Vol. II) Meals may be reimbursed by the City if associated with overnight or out-of-town travel. (T. 108, Vol. I; T. 18, Vol. II) Absent an express policy enacted by the governing body, meals not associated with overnight travel may not be reimbursed. (T. 109, Vol. I)
9. Wolfe was reimbursed \$2,033.40 for mileage. (CX 34, 35) Wolfe's predecessors drove their personal vehicles and did not seek reimbursement for mileage. (T. 35, 201, 18, Vol. I; T. 20-21, Vol. II) In 1990, the City authorized the use of a City vehicle for the mayor, to be used on City business and to be parked at City Hall at the end of each work day. (Cx 8) During Wolfe's tenure, he had access to one or more City vehicles. (T. 37, 241-142, Vol. I; T. 21, Vol. II) Wolfe refused to drive what he referred to as a piece of junk. (T. 38, Vol. I) It is cheaper to drive a City vehicle because the City pays less for gas. (T. 22-23, Vol. II) Under certain circumstances mileage may be reimbursed in accordance with IRS regulations; however, reimbursement for commuting is not authorized. (T. 109, Vol. I) Absent an express policy enacted by the governing body, mileage constitutes an unauthorized expense. (T. 111, 115, Vol. I)
10. Wolfe was reimbursed \$1,267.59 for telephone, both residential and cell phone service. (CX 34, 35) Wolfe's predecessors did not seek reimbursement for their residential and/or cell phone service. (T. 201, 219, Vol. I; T. 23, Vol. II) Wolfe received reimbursement for 100 percent of his residential telephone bill (T. 83, Vol. I) and his personal cell phone bill (T. 84, Vol. I) Council had not approved, in advance, payment of Wolfe's residential or cell phone expenses. (T. 83-4, 183, Vol. I) The City had a cell phone plan in place during Wolfe's tenure and Council did not prohibit Wolfe from using a City issued cell phone. (T. 84, Vol. I; T. 23, Vol. II) The plan cost the City \$25-30 each month per phone. (T. 23-24, Vol. II) Wolfe regularly billed the City in excess of \$45 per month for his personal cell phone. (CX 34) Absent an express policy enacted by the governing body, a residential telephone bill is a personal expense (T. 111, Vol. I) as is a personal cell phone bill (T. 112, Vol. II)

11. Before and throughout Wolfe's administration, the City did not have a policy authorizing the reimbursement of personal expenses for the mayor. (T. 19-20, Vol. I; T. 18, 24, 42, Vol. II) T. 64, 146, Vol. III; CX 6) The mayor is authorized to make purchases of commodities and printing up to \$1,000 without Council's pre-approval, but whenever possible, the purchase is to be based on two competitive bids. (T. 31-33, 128, 163-164, Vol. 1; CX 7). The ordinance does not authorize reimbursement of the mayor's personal expenses for meals, mileage and phone. (T. 33-34, 164, Vol. I)
12. Wolfe sought and obtained expense reimbursement for personal meals, mileage, and telephone expenses from December 2005 through July 2008. (T. 130, Vol. II; CX 1, 2, 34, 35) He received \$5,757.47 in total combined expenses calculated in accordance with the two year statute of limitations applicable to these proceedings. (CX 34, 35) Council has to approve all city payments. (T. 223, Vol. I) Accordingly, the City Clerk submits invoices to Council at each regular Council meeting to allow Council to authorize payment. (T. 29-31, Vol. I) Before and during Wolfe's administration, not every invoice was submitted to Council. (T. 50-52, 221-222, Vol. I; T. 6-9, Vol. II; CX 22) Instead, regular recurring bills, like utility bills, and other hand-cut checks were omitted from the City Clerk's submission. (T. 28-29, 221-222, Vol. I; T. 9, 28-29, Vol. II) Wolfe's expenses were never submitted to Council. (T. 209, Vol. I; T. 25, Vol. II) Wolfe received expense checks that Rowley paid without invoices being brought to Council to be voted upon. (T. 88-89, Vol. II)
13. Complainants, all members of City Council, first became aware that Wolfe was being reimbursed for personal expenses in late 2006 or early 2007, when some questions came up about some previous expenditure. (T. 40, 53, 140-141, 184-185, 198-200, Vol. I; T. 51-52, 63, Vol. II; CX 14, 21) Finance Committee Chairperson, Connie Boardman. (T. 26, Vol. I) requested that the City Clerk provide back-up documentation concerning a number of expenditures which had not been brought to Council. Upon review of the documentation provided, the payments made to Wolfe for reimbursed expenses were discovered. The Finance Committee then met with the City Clerk to review the expenses and discussed them in other Finance Committee meetings. (T. 50-58 Vol. I) Boardman attempted to bring the issue before the full Council but was repeatedly rebuffed by the Mayor who would not put the item on the agenda. (T. 169, Vol. I) The mayor's office prepared agendas for Council meetings. (T. 22, 135, Vol. I; T. 48, 85, Vol. II) Finally, at a November 5, 2007, Council meeting, the issue of guidelines for reimbursement of meals, mileage, and phones was on the agenda. A motion was made, seconded, and adopted to stop all reimbursement payments for mileage, meals, and phone and to refer the matter to the Finance Committee for preparation of guidelines on the payment of these expenses. (T. 90, 93, Vol. I; CX 26) Thereafter, without Council's approval, Wolfe continued to seek and obtain reimbursement for meals, mileage, and phone expenses. (T. 99-101, 187-188, Vol. I; CX 29, 33, 34)

#### **DISCUSSION**

Roger Wolfe was charged with three counts of violating W. Va. Code §6B-2-5 by knowingly and intentionally using his office for his own private gain. Each count alleged that Wolfe obtained

reimbursement from the City of Dunbar without authorization or authority for meals (Count I), personal mileage or personal vehicle use (Count II), and home telephone and personal cell phone expenses (Count III). Wolfe admits that he sought and received reimbursement for meals, mileage and, phone expenses, both cellular and residential telephone. He denies, however, that the reimbursements were obtained without authorization or authority.

A basic principle underlying the West Virginia Governmental Ethics Act (Ethics Act), W. Va. Code §6B-1-1, *et seq.*, is that those in public service should use their positions for the public's benefit and not their own private gain or private gain of another. "Public officials ... who exercise the powers of their office ... for personal gain beyond the lawful emoluments of their position ... at the expense of the public at large undermine public confidence in the integrity of a democratic government." W. Va. Code §6B-1-2(a).

Wolfe, as the elected Mayor of the City of Dunbar, is a public official within the meaning of the Ethics Act and thus, is subject to the conduct requirements set forth in the Ethics Act.

"Public official" means any person who is elected ... to any ... municipal office or position and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person. W. Va. Code §6B-1-3(k).

The charges against Wolfe relate to the prohibition against using a public office for private gain. Specifically, W. Va. Code §6B-2-5(b)(1) states:

*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. 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.

Wolfe, for personal reasons, elected not to accept, or accepted only a partial salary during his tenure. After several months in office he sought to obtain additional compensation in the form of reimbursement for personal expenses for his meals, mileage, and phone service and justified that

request on the basis that the City of Dunbar was not paying him the total salary authorized by city ordinance.

Wolfe continually justified his actions on the basis that he was not taking his full salary. It's as if he were saying the money is there and the City is not using it for salary so let's use some of it to pay expenses. A mayor may not unilaterally take a portion of his salary and dedicate it to another use. In Advisory Opinion 92-20, issued by the Ethics Commission in accordance with the provisions of W. Va. Code §6B-2-3, a mayor sought to employ his spouse to perform certain tasks. While much of the opinion deals with nepotism and the need to advertise the position to all, the Commission recognized that the mayor proposed to pay his wife the salary he was not taking. At the time he was receiving disability benefits, and proposed that his suspended salary be paid to his spouse instead. The Commission ruled that the proposed employment scheme would violate the Ethics Act's private gain provision, W. Va. Code §6B-2-5(b)(1). In the same manner, Wolfe could not dedicate a portion of his own salary to another use, the reimbursement of his expenses.

The payment of expenses to Wolfe was in violation of law. W. Va. Code §8-5-12, governing salary and compensation of municipal officers, makes clear that compensation cannot be increased during a term of office. It states, in part: "Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: Provided, That the salary of any officer shall not be increased or diminished during his term." The statute is in accord with the principle enunciated in Article VI, Section 38 of the West Virginia Constitution prohibiting the increase or decrease of any public officials' salary during their terms in office. Compensation for Mayor of the City of Dunbar was set at a salary of \$38,000 annually. There was no ordinance or policy authorizing the reimbursement of expenses for the Mayor. Even so, Wolfe sought and accepted over \$5,700 in additional compensation in the form of reimbursed expenses. This is an unlawful increase in compensation in violation of the state Constitution even though Wolfe elected not to take his full salary.

An Attorney General's Opinion, 49 W. Va. Op. Att'y Gen. 6 (1960), provides further support for the conclusion that a public official's compensation has been increased by reimbursement for personal expenses. The West Virginia Attorney General was asked to determine whether the payment of additional expenses to legislative members of the Crime Commission violated the Constitutional provision governing the payment of compensation to the members of the Legislature, Article VI, Section 33. The Opinion sets out an exhaustive analysis because of "the gravity of the situation". The analysis distinguishes between legislative or governmental expenses and personal expenses and then concludes that the payment of proper legislative or governmental expenses is not barred by the Constitutional provision at issue, but the payment of personal expenses "such as hotel bills, taxi fares, meals, etc.," is prohibited. Of particular importance to the issue at hand is the final paragraph of the Opinion which states:

Before concluding we wish to state that we also have reviewed the question of whether the resolution violates Article VI, Section 38, of our Constitution, which provides that the salary of a public officer shall not be

increased or diminished during his term of office. While this matter was not raised in your letter, and therefore, has not been the primary subject of our inquiry, yet it should be clear by now that we do not consider the payments in discharge of proper legislative expenses of members of an interim committee to constitute an increase in salary or compensation.

Although not specifically stated, it follows that any reimbursement of prohibited personal expenses would constitute an increase in salary or compensation in violation of Article VI, Section 38 of the Constitution. Wolfe sought and obtained compensation in addition to his salary in the form of reimbursement for his personal and not governmental expenses.

Several municipalities adopted ordinances to reimburse the mayor and other public officials for compensation lost from other jobs because of time spent on municipal business. The situation is similar to the case at hand because the extra compensation was designed to replace salaries that the public officials gave up, although from different sources. The Attorney General was asked to determine whether the reimbursement paid from public funds violated W. Va. Code §8-5-12 and Article VI, Section 38 of the Constitution. The Opinion, 61 W. Va. Op. Att'y Gen. 17 (1985), concluded that the payments constituted an increase in salary or compensation prohibited by the statute and Constitution. Further, it did not matter that the amounts were paid as expenses or otherwise because "the characterization of the funds is not determined by the manner in which they are disbursed." The same is true here. It does not matter that the increased compensation was paid to Wolfe in the form of reimbursed expenses.

Wolfe argues that the expenses for meals, mileage, and phone service were approved by Council. In making this claim he fails to reference a single line from any page of the three volumes of transcribed testimony or a single exhibit. The evidence overwhelmingly and consistently demonstrates the falsity of Wolfe's argument. Each and every expense report submitted for payment was signed as approved by Roger Wolfe. There is not a scintilla of evidence that Council had a policy authorizing payment of expenses to the Mayor or that Council ever approved payment of expenses to Wolfe. Wolfe's expenses were not presented to Council for approval and Wolfe knew that they were not included in the materials provided to Council. Additionally, none of Wolfe's predecessors as Mayor had received reimbursed expenses.

Wolfe's behavior was particularly egregious because he expended significant energy in keeping Council in the dark about the expense reimbursement. Once Council learned about the reimbursements, the Mayor refused to allow the issue on the agenda for discussion. The payments were discovered at the end of 2006 or early 2007 and it was not until November 2007 that the issue finally reached a Council meeting. At that meeting Council voted to stop the payments. In one final snub to the authority of Council, Wolfe ignored the official action of the city's legislative body and continued to receive payments for reimbursed expenses.

If Wolfe's argument is that Council approved the expenses, in lieu of him taking a full salary, when members of the Finance Committee, meeting sometime in December 2005, approved the arrangement, then that argument too must fail. Boardman, Bailey and Wilshire deny that there was approval of

expenses resulting from that meeting. Jenkins agrees with them although it's disputed whether he was at the meeting. Coleman had no idea how the expense reimbursement came about. Only Sullivan insisted that approval was given as a result of that meeting. Further, the Finance Committee can only recommend policy to the full Council for its action. Accordingly, the action of a City committee is not the adoption of policy by City Council.

Wolfe also attempts to justify the expenses as all relating to his "official duties" as mayor. The point he misses is that his expenses of driving his car, eating his meals, and communicating on his phones are all personal and not governmental expenses as discussed above. Further, he argues he had to claim mileage because Council would not provide him with "an automobile suitable" for his use in carrying out his official duties. The uncontroverted evidence is that the city made vehicles available for the mayor to drive. He just did not like any of them. Wolfe can make that decision but he can't turn around and charge the City citizens for his likes and dislikes. He also argues that his \$45 per month reimbursement for cell phone was "cheaper" than having the city provide him with a cell phone. In this case, the uncontroverted evidence is that under the city's cell phone plan, the usual cost was \$25 to \$30 per month per phone. Clearly Wolfe's \$45 monthly reimbursement was not "cheaper" than the city's plan. He explains that he claimed reimbursement for his entire home phone service because his previous employer had paid the entire bill. He may not have been used to paying a home phone bill but that does not mean that public funds should be used to pay it.

#### CONCLUSIONS OF LAW

1. Wolfe, as the elected Mayor of Dunbar, is a public official within the meaning of the Ethics Act. W. Va. Code §6B-1 3(k).
2. Public officials are prohibited from using their public office for private gain. W. Va. Code §6B-2-5(b)(1)
3. Wolfe unilaterally took a portion of his salary and dedicated it to another use, the payment of his personal reimbursed expenses in violation of W. Va. Code 6B-2-5(b)(1).
4. It is not relevant that the funds in question ere paid through the expense account procedure since the characterization of the funds is not determined by the manner in which they are disbursed. 61 W. Va. Op. Att'y Gen. 17
5. The payment of reimbursed expenses to Wolfe constituted an increase in salary or compensation contrary to Article VI, Section 38 of the West Virginia Constitution and W. Va. Code §8-5-12.
6. The expenses for meals, mileage, and phone are personal expenses and not governmental expenses. 49 W. Va. Op. Att'y Gen. 6.

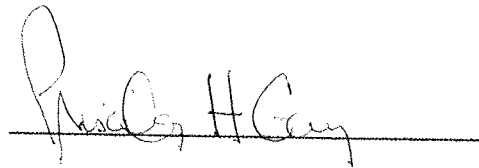


7. Dunbar City Council did not have a policy authorizing payment of reimbursed expenses to the Mayor for meals, mileage, and phone. As such, the payments were unauthorized and thus, unlawful expenditures. W. Va. Code §11-8-26.
8. The City of Dunbar had a policy authorizing the use of a city vehicle by the Mayor at city expense. Wolfe's refusal to use the available city vehicles because they were, in his opinion, unsuitable, does not result in an authorization for him to collect mileage expense from the city. The payments for mileage expense were unauthorized and thus, unlawful expenditures. W. Va. Code §11-8-26.
9. The City of Dunbar had a policy to provide and pay for cell phones for certain city officials and employees. Wolfe's failure to participate in the city plan does not result in an authorization for him to collect cell phone reimbursement expense from the city. The payments for cell phone expense were unauthorized and thus, unlawful expenditures. W. Va. Code §11-8-26.
10. Wolfe's prior employer paid for Wolfe's home phone bill. The City of Dunbar had no policy authorizing the reimbursement of home phone expenses of the Mayor. The home phone expense payments were unauthorized and thus, unlawful expenditures. W. Va. Code §11-8-26.
11. Wolfe sought and obtained reimbursement from the City of Dunbar for his meals in the amount of \$2,453.48, without authorization and authority.
12. Wolfe sought and obtained reimbursement from the City of Dunbar for his mileage in the amount of \$2,033.40, without authorization and authority.
13. Wolfe sought and obtained reimbursement from the City of Dunbar for residential telephone and cell phone service in the amount of \$1,267.59, without authorization and authority.
14. The record proves beyond a reasonable doubt that Wolfe sought and obtained \$5,757.47 in combined expenses without authority or authorization.
15. The record proves beyond a reasonable doubt that Wolfe committed three violations of the Ethics Act by using his position and public resources in seeking and obtaining reimbursements for his meals, mileage, and phone services in violation of W. Va. Code §6B-2-5(b)(1).

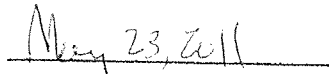
#### **DECISION**

**WHEREFORE**, it is the recommended decision of the Hearing Examiner, after careful and impartial consideration of all the evidence in this case, that the Ethics Commission proved beyond a reasonable doubt that Respondent Roger Wolfe, as Mayor of the City of Dunbar, used his public office for private gain in violation of the West Virginia Governmental Ethics Act. Wolfe committed three violations of the Ethics Act by using his public position and public resources in seeking and obtaining

reimbursement for his meals, mileage, and phone service, both residential and cellular, in the total amount of \$5,757.47, without authorization and authority, in violation of W. Va. Code §6B-2-5(b)(1).

A handwritten signature in cursive script, appearing to read "Paul H. Gay", is written over a horizontal line.

Hearing Examiner

A handwritten date "May 23, 2011" is written over a horizontal line.

Date Issued