

History of the Ethics Commission

The Early Years

1989 - 2014



The West Virginia Ethics Act was adopted following the [Inaugural Address](#) of Governor Gaston Caperton on January 16, 1989, in which he announced a special session asking the legislature to adopt comprehensive ethics legislation. Governor Caperton stated:

Our mission will be accomplished as we focus with tenacity on a new set of values. Values like ethics. West Virginians are an honest and straightforward people and they deserve the same from their public officials. We need to be able to trust each other, and that trust can only be achieved with the firm commitment toward ethical standards in government.

1989

The initial meeting of the Commission was held in the State Capitol Building on August 11. Lee Feinberg, designated as the Commission's Acting Chairman by Governor Caperton, presided at the meeting. All the original twelve appointed Commissioners were present at the meeting. In the course of their initial meeting, the Commissioners elected Mr. Feinberg as the Commission's first Chairman, Fred Caplan as Vice-Chairman, and Michael Nogay as Secretary, all with a term expiring June 30, 1990. Secretary Nogay was responsible for providing the Commission with minutes of the meetings. Chairman Feinberg then appointed three, four-member subcommittees, denominated A, B, and C, to "do preliminary research and drafting of advisory opinions." Requests for advisory opinions which had been received were assigned for study and drafting to each of the subcommittees in turn. Each subcommittee would conduct business in person or by telephone and would then make a presentation to the full Commission. Chairman Feinberg also appointed a screening subcommittee to advertise and interview applicants for the executive director position. Chairman Feinberg was delegated the authority to "begin ordering stationery, conduct routine and other housekeeping functions, and to conduct other

business as may need to be done to carry on the day-to-day business of the Commission...”

Assignments for advisory opinions were made at one meeting for consideration at the next meeting. During the second meeting on September 7, the Commission issued its first formal advisory opinion, [AO 1989-01](#). Chairman Feinberg was authorized to employ part-time staff to conduct legal research, the drafting of rules and regulations, and provide secretarial help.

At the meeting on October 5, Chairman Feinberg introduced the Commission’s newly retained legal counsel, Lyne Ranson, and the first executive director of the Commission was approved. The first employment exemption was issued at the Commission meeting in October.

At the November Commission meeting, the Commission’s first executive director, Richard Alker, announced that he had secured office space for the Commission and staff at 1207 Quarrier Street in Charleston. He also announced the hiring of a part-time typist. Also at the November meeting, Chairman Feinberg restructured the subcommittees to research and draft advisory opinions to four instead of three, A, B, C, and D, now with three Commission members each.

During these early meetings, the Commission as a whole dealt with complaints in executive session. On December 7, for the first time, Chairman Feinberg appointed an investigative committee to investigate written complaints. The investigative panels (A, B, C, and D) would meet after the regular Commission meetings. Also on December 7, the Commission determined that regular monthly meetings would be held on the first Thursday of each month. The Commission continues to adhere to this schedule.

1990

At the February 1 meeting, the Executive Director announced that the Commission had published and distributed its first directory of registered lobbyists. Also at the February meeting, legal counsel reported that, to date, 145 advisory opinions had been issued and answers had been given to the requesting parties on 250 separate questions of law.

The final draft of the Financial Disclosure Statement (“FDS”) was approved at the February meeting.

During the Commission's regular meeting on June 6, the Commission approved its first Conciliation Agreement, assessing fines of \$200 to two respondents. During the September meeting, the Executive Director advised the Commission that a contract was in place for the services of a private investigator.

The Commission approved a procedure for persons seeking opinions on questions already decided by the Commission, that those persons seeking opinions will be given copies of existing opinions or letters setting out the Commission's prior decisions. The Commission felt that this practice would reduce repetitive opinions and give the Commission more time for consideration of cases of first impression.

1991

During its meeting on January 3, the Commission adopted its first official guidelines, "Nepotism" and "Vendor Financed Trips." Commission meetings would often be held until evening hours, with a lunch break in between.

The Executive Director reported that training on the West Virginia Governmental Ethics Act and informative brochures were being made and distributed over the State.

The Commission continued with subcommittees (A, B, C, and D) drafting advisory opinions and investigative panels (A, B, C, and D) considering complaints. Advisory opinions were often adopted, deferred, or denied in sections and over the course of several meetings.

1992

At its February meeting, the Commission heard oral arguments in a verified complaint. The members of the investigative panel were excused from the room, and the respondent and his counsel presented an oral argument and answered questions from the Commission members about the evidence presented during the oral argument. The Commission went into executive session for discussion. Once back in public session, the Commission unanimously voted to affirm and adopt the hearing examiners "Findings of Fact and Conclusions of Law." Sanctions imposed included a public reprimand, fines totally \$1,200, and a recommendation to terminate the respondent's public employment.

At the October meeting, Commission staff took over the responsibility of drafting the meeting minutes, and the Commission did not select a new Secretary.

At the November meeting, the Commission approved a guideline prepared by staff relating to the acceptance of gifts, as established in Advisory Opinions [AO 1992-35](#) and [AO 1992-38](#).

For verified complaints received, the Commission made, as a matter of policy, that the Commission will release the original complaint, the respondent's written response, and the investigative panel's final decision on the matter to the complainant and respondent. The Commission further stated that all

investigative materials shall remain confidential. This policy was later changed by the Commission (see the year 1997).

1993

The Commission authorized the Commission staff to appoint hearing examiners in all cases where a finding of probable cause has been made and a statement of charges has been issued, unless the Commission votes to serve as the hearing board.

By early 1993, the Commission discontinued the practice of assigning advisory opinion requests to Commission panels for review. The task of drafting advisory opinions was assumed by the Commission staff. The draft of the advisory opinion was presented to the Commission for review, approval, amendment, and/or denial.

1994

At the February meeting, the Executive Director reported that after a Sunset Review of the Commission, the State Senate voted 34 to 0 to extend the Commission for an additional period of six years.

By July 1994, Commission staff had produced a brochure on the Ethics Act and distributed 13,000 brochures to various cities in the State, and staff was currently working on a mailing to all counties and county boards of education.

1995

The Commission staff sent out 38,000 Ethics Act brochures to all public school employees located throughout the State, and staff was currently working on sending specialized brochures to employees of all higher education facilities.

1996

The Commission authorized staff to update the current computer system in the office and authorized that the Commission expend a maximum of \$10,000.

1997

The Commission unanimously moved that “answers” (responses) provided to the Commission by respondents of verified complaints do not fall within West Virginia Code and therefore shall remain confidential.

On September 4, Chairman Feinberg resigned from the Commission, and a new Chairman was elected. Mr. Feinberg was acknowledged for his dedicated and capable leadership. A Commission member wrote about Mr. Feinberg: "Your presence on the Ethics Commission during the past eight years was of untold benefit to the success of this Commission during these years. Your sound judgement and concern for State employees will be greatly missed." Under Mr. Feinberg's leadership, the Commission rendered over 600 advisory opinions in its eight years of operation. A press release was issued:

Mr. Feinberg, a Charleston attorney who served as Chairman of the Commission since its creation in 1989, resigned his position on the Commission to serve as co-chair of the Alliance for Civil Justice Reform, a coalition of businesses, local governments, chambers of commerce and nonprofit agencies working for tort reform legislation at the State level.

At the October meeting, the Executive Director discussed the Commission's role in educating all new government appointees.

1998

The Commission met outside of Charleston for the first time. This meeting was held in Flatwoods, West Virginia, and involved the Commission serving as a hearing panel in a verified complaint.

1999

The Legislature amended the Open Governmental Meetings Proceedings Act, also known as the Open Meetings Act or the Sunshine Law, W. Va. Code § 6-9A-1, et seq., giving the Commission a role in interpreting the provisions of the Act. Effective March 19, 1999, a three-member panel of the Commission was given authority to render advisory opinions to governing bodies of public agencies, and to the members of such governing bodies, on the meaning and application of the Open Meetings Act. The Commission was not assigned any enforcement responsibilities or duties under this Act.

The Open Governmental Meetings Committee held its first meeting on July 8, after a regular meeting of the Ethics Commission had concluded. The Committee reviewed and issued its first two advisory opinions under the Open Meetings Act at this initial meeting. [OMAO 1999-01](#) and [OMAO 1999-02](#).

2000

The Commission discussed plans for the Ethics Commission's website.

At its November meeting, the Commission adopted the following policy determination:

The Open Governmental Proceedings Act provides that a meeting for the purpose of making an adjudicatory decision in any quasi-judicial or administrative proceeding is not a "meeting" for purposes of the Act. In regard to any Conciliation Agreement, the Ethics Commission is required to decide:

1. is the agreement in the best interest of the State and the Respondents as required by W. Va. Code § 6B-2-4(r);
2. do the facts in the agreement establish beyond a reasonable doubt that a material violation of the Ethics Act has occurred; and
3. what sanction or sanctions are appropriate.

These determinations involve decisions of an adjudicatory nature in a quasi-judicial proceeding. Therefore, the Commission will take up such adjudicatory matters as Conciliation Agreements in a separate meeting after adjournment in the same manner that other matters arising out of the complaint process are adjudicated by the Investigative Panels.

2001

The final draft of the Open Governmental Meetings brochure was approved. The Commission's Legal Counsel was drafting sample agendas and notices that could be distributed to various boards, committees, etc., to help them comply with the Open Meetings Act.

The Commission had five vacancies on the Commission in April. By the November meeting, five new members were appointed by the Governor. A new chairman was elected at the July meeting. At the November meeting, the investigative panels were revised to include the new Commissioners.

It was noted that presentations had been given with the Division of Personnel and that arrangements were being made to meet with cabinet secretaries and some division heads to refresh them on the Ethics Act.

The Commission approved the following procedure:

Procedure For Deciding Legal Questions

The Commission's Investigative Panels are responsible for developing and resolving/actual issues. Investigative Panels shall resolve questions of law on the basis of prior decisions of the full Commission.

If an Investigative Panel is required to rule on a question of law which it perceives has not previously been decided by the full Commission, it shall, at its discretion, refer the question to the full Commission for decision and all Commission members, including those serving on the Investigative Panel which referred it, are eligible to take part in the decision.

The Commission will decide such legal questions in a manner which will, to the greatest extent possible, avoid disclosure of specific facts and allegations of facts to those Commission members who are not serving on the Investigative Panel which referred the legal question.

Legal issues referred to the Commission under the foregoing provisions will be decided by a majority of the Commission's total serving members.

2002

At the July meeting, Commission staff was granted permission to set earlier deadlines for submission of lobbyist materials in order to publish the directory in a more timely manner. It was also noted that research was ongoing regarding the addition of lobbyist photographs to the Commission's web page.

The Commission's Executive Director taped two episodes of the show "The Law Works" for the local Public Broadcasting Station. Two thirty-minute episodes were taped, one for information on the Ethics Act and one for Open Governmental Meetings proceedings.

2003

During the 2003 Legislative Session, the Ethics Commission was given the responsibility to issue advisory opinions regarding school board members holding other board public offices or positions. The first school board advisory opinion ([SBAO 2003-01](#)) was issued on July 10.

2004

Executive Director Richard Alker was honored for his years of service as the Commission's first Executive Director of the Ethics Commission from October 1989 through February 2004.

Staff worked with a subcommittee of the State Bar to write the Administrative Law Judges Code of Conduct.

2005

The Code of Conduct for Administrative Law Judges ("ALJ") passed by the Legislature in 2004, and the rules were approved to take effect July 1, 2005. An outreach training session was held on June 23 at the CAMC Hospital auditorium.

At the June meeting, Commissioners were appointed to serve on the Committee on Standards of Code for Administrative Law Judges. The first meeting of the Committee was held on July 14, where a chairperson was elected. The Committee determined that the procedure for handling ALJ advisory opinions will be handled in a similar manner to normal advisory opinion requests. Complaints against ALJs must be received as verified complaints, as the Committee does not have authority to initiate complaints on its own initiative.

The Commission's offices were relocated to 210 Brooks Street, Suite 300. The Commission's offices remain at this location to this date.

The Commission elected a new vice-chairman due to the departure of the current vice chairman, who had been appointed to the newly created Probable Cause Review Board. The remaining investigative panels required realignment due to the departure of the vice chairman. Panel A was realigned and Panel B was dissolved since they had no complaints pending. Panel C had items for discussion.

During the 2005 Special Session of the Legislature, the Ethics Act was amended to provide for the creation of a Probable Cause Review Board. The Probable Cause Review Board first met in July 2005, with three members appointed by the Governor. W. Va. Code § 6B-2-2a states:

There is hereby established a Probable Cause Review Board that shall conduct investigations to determine whether there is probable cause to believe that a violation of the West Virginia Governmental Ethics Act has occurred. The Review Board is an autonomous board, not under the direction or control of the Ethics Commission. The Review Board will review complaints received or initiated by the Ethics Commission to make a threshold determination of

whether probable cause exists to believe that a violation of the West Virginia Governmental Ethics Act has occurred.

The Commission first discussed the conversion of lobbyist registrations, reports and Financial Disclosure Statements to an on-line electronic format.

2006

Legislation was passed during the 2006 Legislative Session authorizing the Commission to audit lobbyist expense reports beginning July 1, 2006.

The Open Governmental Meetings amendment was passed authorizing the Committee on Open Governmental Meetings to issue precedential opinions beginning in July 2006.

The Commission issued its first Administrative Law Judge Advisory Opinion ([ALJAO 2006-01](#)) on May 4.

The first mandatory lobbyist training was held on January 4, with approximately 32 people in attendance.

2007

The first Contract Exemption ([CE 2007-01](#)) was issued by the Commission at its meeting on July 12.

2008

The Commission approved several proposed legislative rules, such as: Personal Property Exemptions, Employment Exemptions, Interest in Public Contracts, Filing of Verified Time Records, Lobbying, Voting.

The Commission discussed funds to recognize public servants annually or upon retirement. The Commission approved \$100 per retiree for a plaque or other honorarium items.

At the August meeting, the Commission granted approval for staff to post advisory opinions on the Commission's website.

2009

The Executive Director advised the Commission that she and general counsel will be appearing on the Dan Ringer program, The Law Works, in January 2010.

2010

At the July meeting, the Commission decided that only the conciliation agreements and final orders with public reprimands will be placed on the Commission's website, and that no financial disclosure statements be listed on the website. (This decision was later changed.)

The Commission issued its first Property Exemption ([PE 2010-01](#)) at the August 5 meeting.

2011

The Commission did an extensive overview of the revised Financial Disclosure Statement and discussed posting the statement on the Commission's website.

2012

The Commissioners discussed the Commission's role and duty in providing advice to public servants, noting that such advice promotes compliance. No Commissioner spoke in favor of changing the Commission's longstanding policy regarding staff providing informal advice. (1990 Meetings)

The Commission approved guidelines titled: "Public Contracts Provisions Governing County Officials and County School Systems - W. Va. Code § 61-10-15," "Prohibited Interest in a Public Contract," and "How to Seek a Contract Exemption."

2013

The Commission's ethics training sessions were made available on the Commission's website in video and/or Microsoft PowerPoint format, but staff will continue to provide training in person.

2014

House Bill 4298 passed, reducing the size of the Commission from 12 to 9 members, and designating one slot for a member from a "rural area." The at-large positions were renamed "citizen members."