

Advisory Opinion 2019-05

Issued on March 7, 2019, by

The West Virginia Ethics Commission

Opinion Sought

The **Director of an office at a state public university** asks whether she is required to file annual Financial Disclosure Statements with the Ethics Commission.

Facts Relied Upon By the Commission

The Requester asks whether she, as a director of an office of a state university, is required to file Financial Disclosure Statements.

Provisions Relied Upon By the Commission

W. Va. Code § 6B-2-6 provides, in relevant part:

- (a) The financial disclosure statement shall be filed on the first day of February of each calendar year to cover the period of the preceding calendar year, except insofar as may be otherwise provided herein. The following persons must file the financial disclosure statement required by this section with the Ethics Commission:
 - (1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;
 - (2) All members of state boards, commissions and agencies appointed by the governor; and
 - (3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

Advisory Opinion

The Ethics Act requires that certain public servants and candidates file Financial Disclosure Statements annually with the Ethics Commission. The purpose of filing Financial Disclosure Statements is to “reveal any potential conflicts of interest that ...

public servants and candidates may have, as they are in, or may assume[,] positions in which they have decision making power, with far reaching effects on matters directly affecting the public.” Advisory Opinion 2017-06 (citing Advisory Opinions 2014-13 and 90-165). “The mere requirement of such disclosure discourages any impropriety, and also give reassurances to the public that no improper conflicts exist.” *Id.*

The Legislature expressly listed the individuals required to file financial disclosures in W. Va. Code § 6B-2-6(a). “All elected officials in this state” are required to file Financial Disclosure Statements pursuant to W. Va. Code § 6B-2-6(a)(1). In addition, [a]ll members of state boards, commissions and agencies appointed by the governor” are required to file. W. Va. Code § 6B-2-6(a)(2). Finally, the following persons are required to file: “Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.” W. Va. Code § 6B-2-6(a)(3).

The Ethics Commission must determine whether the Requester, as a director of an office of a state university, must file Financial Disclosure Statements pursuant to the third category of required filers (W. Va. Code § 6B-2-6(a)(3)). The Commission recently addressed the application of this third category in Advisory Opinion 2017-06, in which the Requester asked whether employees of the legislative branch, which included directors and deputy directors of legislative offices, were required to file Financial Disclosure Statements. The Commission held that subsection (3) does not describe positions in the legislative branch but instead describes positions falling under the executive branch of state government and that, accordingly, employees of the legislative branch are not required to file.

In evaluating whether employees or officials of public colleges and universities must file Financial Disclosure Statements, the Commission will now consider the plain language of the statute. As set forth in *Goff v. W. Va. Office of Ins. Commissioner*, 236 W. Va. 393, 780 S.E.2d 659 (2015), “[w]here the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.” (quoting Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968)). The Commission finds that the third category does not reference “state colleges or universities” commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

Moreover, positions commonly associated with colleges and universities, such as president, provost and dean, are not included in the list of required filers. “In the interpretation of statutory provisions, the familiar maxim *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, applies.” Syllabus Point 3, *Manchin v. Dunfee*, 174 W.Va. 532, 327 S.E.2d 710 (1984); *Martin v. Hamblet*, 230 W. Va. 183, 187, 737 S.E.2d 80, 84 (2012).

The Ethics Commission therefore holds that W. Va. Code § 6B-2-6(a)(3) does not apply to commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads of public colleges and universities. The Requester accordingly is not required to file annual Financial Disclosure Statements with the Ethics Commission.

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, at W. Va. Code §§ 6B-1-1 through 6B-3-11 and does not purport to interpret other laws or rules.

In accordance with W. Va. Code § 6B-2-3, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked or the law is changed.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission