

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

GARY KEITH,

COMPLAINT NO. VCRB 2022-03

**City Council member,
City of Clarksburg,
Respondent.**

STATEMENT OF CHARGES

The Probable Cause Review Board of the West Virginia Ethics Commission entered an Order on June 21, 2023, finding that there is probable cause to believe that Gary Keith, the Respondent in the above-referenced Complaint, violated the following provisions in the Ethics Act:

W. Va. Code § 6B-2-5(b)(1) states, in relevant part:

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. . . .

W. Va. Code § 6B-2-5(j)(1) states, in relevant part:

Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stock of any class.

. . . .

W. Va. Code § 6B-2-5(j)(3) states:

For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making

process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

Advisory Opinion 2010-08 states, in relevant part:

City officials may not vote to extend their terms of office.

The Probable Cause Review Board found probable cause that Respondent Gary Keith's acts of participating in votes to extend his term of office violated the Ethics Act's voting restrictions, at W. Va. Code § 6B-2-5(j)(1) and (j)(3), and the private gain prohibition, at 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.

Jurisdiction

1. Gary Keith ("Keith") served as a City Council member for the City of Clarksburg at all times relevant herein.
2. As a City Council member, Keith is a "public official" as defined in the Ethics Act, at W. Va. Code § 6B-1-3(k).
3. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act committed by West Virginia public officials such as Keith. W. Va. Code §§ 6B-1-1 through 6B-3-11.

Facts

4. During the relevant time period, the City of Clarksburg was governed by:
 - Seven elected City Council members serving four-year staggered terms.

- A Mayor and Vice Mayor elected by the City Council members from their own members to serve a two-year term.
- A City Manager who serves at the will and pleasure of the City Council.

5. On **June 1, 2021**, there was a City of Clarksburg municipal election, and the ballot contained proposed City Charter Amendments. One Charter Amendment, which was subsequently passed by the voters, changed the City's form of government and its election day. The Respondent's actions relating to the 2021 Charter Amendment, which extended his term of office and the terms of office of two other Council members by one year, serve as the basis for the allegations in this matter. The relevant facts and procedural history follows.

6. On **June 4, 2019**, there was a City election, and three of the seven Council seats were on the ballot. The three new City Council members elected for four-year terms, commencing on July 1, 2019, and ending on June 30, 2023, were Lillie Junkins ("Junkins"), Gary Keith, II ("Keith or "Respondent"), and James Marino ("Marino"). The four other Council positions were not up for election in June 2019 as their terms of office did not expire until June 30, 2021.

7. City of Clarksburg Council members receive compensation, \$200 per month, for serving on Council. They also have the option to receive health insurance benefits through the City and its Public Employees Insurance Agency ("PEIA") plan or to opt out of PEIA and instead receive a monthly reimbursement to cover their health insurance premiums with another health insurance provider. Keith opted out of the City's health insurance and received a monthly reimbursement from the City in the amount of \$220.00.

8. The City of Clarksburg's Charter establishes the terms of office for its elected officials and the City's election procedures, including the election day. City of Clarksburg elections were, historically, held every two years on the first Tuesday in June in odd-numbered years. In or around 2019, the City leaders began discussing that to improve voter turnout that the City should hold its elections on the same day and year as West Virginia's primary election day, which is the second Tuesday in May in even-numbered years.

9. To change its election day and year, the City had to amend the City Charter at Section 37. A City Charter amendment requires the City Council members to pass an ordinance proposing the Charter amendment. If the ordinance passes, the proposed Charter amendment is then placed on the next municipal election ballot for approval by the voters.

10. On **January 2, 2020**, the City Council passed an ordinance amending Section 37 of the Charter, subject to approval by the voters, to provide for new election dates. The ordinance ("New Election Date Ordinance") changed the Charter so that City elections would be held on the same day and year as West Virginia's primary election day. The proposed election day change did not financially benefit any Council member.

11. On **February 20, 2020**, the City Council voted six to one to place the New Election Date Ordinance on the June 1, 2021, General Election ballot. No Council members were prohibited from voting on the ordinance because it did not financially impact them. The decision to change the election date, however, resulted in subsequent events which resulted in the terms of office of Junkins, Keith, and Marino being extended by one year.

12. The New Election Date Ordinance was flawed because it failed to reconcile the current Council members' terms of office with the proposal to hold the first even-numbered year election in 2022 and the next one in 2024. The terms of offices of the Council members elected in 2019 for four-year terms would expire on June 30 2023, but the next City election would not occur until June 2024. Hence, the timing of events under the New Election Date Ordinance would have left three vacancies on the Council for a twelve-month period, July 1, 2023, until June 30, 2024. Further, the four new members that would be elected in the 2021 election for four-year terms would have their terms of office end on June 30, 2025, but the next City election would not occur until June 2026 thereby resulting in four vacancies on Council for a twelve-month period, July 1, 2025, until June 30, 2026.

13. In **January 2021**, City Council took up the issue of having the citizens directly elect the Mayor. At that time, it became apparent that the New Election Date Ordinance needed to be fixed to reconcile the Council members' terms of office with the change from odd to even year elections so that there would not be vacancies.

14. On advice from the City Manager and City Attorney, a proposed ordinance was drafted. The proposed ordinance ("Direct Election of Mayor and Extension of Terms Ordinance") created two sets of five-year terms of office for City Council members as follows:

- Those Council members who were first elected in June 2019, would have their terms extended by one year, ending on June 30, 2024, instead of June 30, 2023.

- The four Council members to be elected in the upcoming June 2021 election would serve five-year terms, ending on June 30, 2026. Then, in May 2026, one council position would be eliminated and the voters would directly elect the Mayor at the 2026 election. Hence, there would be six Council members and an elected Mayor starting July 1, 2026.

15. The Direct Election of Mayor and Extension of Terms Ordinance uniquely affected Junkins, Keith, and Marino, the three council members elected in June 2019, by extending their terms of office by one year.

16. On **January 21, 2021**, the first reading of the Direct Election of Mayor and Extension of Terms Ordinance was on the City Council meeting agenda and considered at that meeting. The agenda item was listed as “Consideration of First Reading of an Ordinance of the City of Clarksburg Amending Section 5 of the City Charter to Provide for Direct Election of the Mayor.” The City Council voted in favor of adopting the Direct Election of Mayor and Extension of Terms Ordinance on the first reading by a vote of four to three. Neither Junkins, Keith, nor Marino recused themselves from the discussion and vote. The votes of Junkins, Keith, and Marino were as follows:

- Junkins - voted in opposition to the Ordinance
- Keith - voted in opposition to the Ordinance
- Marino - voted in opposition to the Ordinance

17. On **February 4, 2021**, the City Council had a second reading of the Direct Election of Mayor and Extension of Terms Ordinance. The second reading of the Direct Election of Mayor and Extension of Terms Ordinance passed by a vote of four to two.

Neither Junkins nor Keith recused themselves from the discussion and vote. The votes of Junkins, Keith, and Marino were as follows:

- Junkins - voted in opposition to the Ordinance
- Keith - voted in opposition to the Ordinance
- Marino - absent from meeting, did not vote

18. On **April 1, 2021**, the City Council voted to place the Direct Election of Mayor and Extension of Terms Ordinance on the June 1, 2021, General Election ballot. The vote to place the Direct Election of Mayor and Extension of Terms Ordinance on the ballot passed unanimously. Neither Keith nor Marino recused themselves from the discussion and vote. The votes of Junkins, Keith, and Marino were as follows:

- Junkins - absent from meeting, did not vote
- Keith - voted in favor of placing the Ordinance on the ballot
- Marino - voted in favor of placing the Ordinance on the ballot

19. The Direct Election of Mayor and Extension of Terms Ordinance was placed on the June 2021 General Election ballot as a proposed Amendment to the City Charter along with the New Election Date Ordinance and three other proposed Charter Amendments. The title of the Direct Election of Mayor and Extension of Terms Ordinance ballot amendment was listed on the ballot as: "Amendment No. 5: To change from a 7-member Council from which council members elect a mayor to a 6-member Council plus a mayor elected by the public; imposition of term limits; and procedures for vacancies." The ballot also contained a summary of Amendment No. 5 and the other proposed City Charter Amendments. The title and description on the ballot did not

reference the one-year term extension for Council members Junkins, Keith, and Marino, but the summary did.

20. On **June 1, 2021**, the City of Clarksburg municipal election was held. The voters passed the Direct Election of Mayor and Extension of Terms Ordinance and the other Charter Amendments thereby amending the City's Charter.

21. The adoption of the Charter Amendment by the voters extended the terms of office by one year of Council members Junkins, Keith, and Marino. But for the City Council passing the Direct Election of Mayor and Extension of Terms Ordinance, this matter would not have been on the ballot and the terms of office of Junkins, Keith, and Marino would not have been extended.

22. At some point after the June 2021 municipal election, the City Council determined that there were defects in the Charter Amendments passed during that election. Thereafter, in 2023, the City Council proposed two additional ordinances: Charter Amendment No. 23-4 "An Ordinance of the City of Clarksburg Amending Sections 5, 25, and 38 of the City Charter" (hereinafter "Charter Amendment 23-4") and Ordinance No. 23-5 "An Ordinance Regarding Charter Amendments and Elections" (hereinafter "Ordinance Placing Three Council Seats on Upcoming Ballot") (collectively "New Ordinances").

23. Charter Amendment No. 23-4 contained a provision ending the terms of office for the three seats held by Junkins, Keith, and Marino, on June 30, 2023 - the original expiration date for their terms of office that began on July 1, 2019 - and placing those three seats on the June 6, 2023, election ballot for the voters to elect three council members to serve a one-year term. Charter Amendment No. 23-4 also adjusted

the terms of the City's elected Water Board members to facilitate the election date change from odd-numbered years to even-numbered years.

24. Charter Amendment No. 23-4 was placed on the June 6, 2023, election ballot for approval by the voters pursuant to W. Va. Code § 8-4-7. The voters passed Charter Amendment No. 23-4 thereby amending the City's Charter to provide for a one-year term for the three council seats elected in the June 6, 2023, election. Those Council seats would then be up for election again in May 2024 for a four-year term.

25. The second New Ordinance, Ordinance No. 23-5, Ordinance Placing Three Council Seats on Upcoming Ballot, resulted in Junkins, Keith, and Marino's seats being on the June 6, 2023, municipal election ballot.

26. The Ordinance Placing Three Council Seats on Upcoming Ballot stated as grounds for its enactment, in part, that "objections have been made as to such Charter amendments, specifically as to the extension of certain terms of office." Ordinance No. 23-5 at para. 6. The procedural history of the 2023 election and charter change, and the involvement of the Respondent therein, follows.

27. On **February 2, 2023**, the City Council had a first reading of Charter Amendment No. 23-4. The first reading of Charter Amendment No. 23-4 passed five to two. Neither Junkins, Keith, nor Marino recused themselves from the discussion and vote. The votes of Junkins, Keith, and Marino were as follows:

- Junkins - voted in opposition to the Ordinance
- Keith - voted in favor of the Ordinance's passage
- Marino - voted in opposition to the Ordinance

Junkins and Marino's votes constituted votes in favor of maintaining their extended terms, created by the Direct Election of Mayor and Extension of Term of Office Ordinance on June 1, 2021, thereby allowing them to serve an additional year beyond the original four-year term that otherwise would have expired on June 30, 2023.

28. Also on **February 2, 2023**, the City Council had a first reading of the Ordinance Placing Three Council Seats on Upcoming Ballot.

29. The first reading of the Ordinance Placing Three Council Seats on Upcoming Ballot, passed five to two. Neither Junkins, Keith, nor Marino recused themselves from the discussion and vote. The votes of Junkins, Keith, and Marino were as follows:

- Junkins - voted in opposition to the Ordinance
- Keith - voted in favor of the Ordinance's passage
- Marino - voted in opposition to the Ordinance

Junkins and Marino's votes constituted votes in favor of maintaining their extended terms of office, created by the Direct Election of Mayor and Extension of Term of Office Ordinance on June 1, 2021, thereby allowing them to serve an additional year beyond the original four-year term that otherwise would have expired on June 30, 2023.

30. On **February 16, 2023**, the City Council had a second and final reading of the Charter Amendment No. 23-4.

31. The second and final reading of Charter Amendment No. 23-4 passed five to two. Neither Junkins, Keith, nor Marino recused themselves from the discussion and vote. The votes of Junkins, Keith, and Marino were as follows:

- Junkins - voted in opposition to the Ordinance

- Keith - voted in favor of the Ordinance's passage
- Marino - voted in opposition to the Ordinance

Junkins and Marino's votes constituted votes in favor of maintaining their extended terms of office, created by the Direct Election of Mayor and Extension of Term of Office Ordinance on June 1, 2021, thereby allowing them to serve an additional year beyond the original four-year term that otherwise would have expired on June 30, 2023.

32. Also on **February 16, 2023**, the City Council had a second and final reading of the Ordinance Placing Three Council Seats on Upcoming Ballot.

33. The second and final reading of the Ordinance Placing Three Council Seats on Upcoming Ballot passed five to two. Neither Junkins, Keith, nor Marino recused themselves from the discussion and vote. The votes of Junkins, Keith, and Marino were as follows:

- Junkins - voted in opposition to the Ordinance
- Keith - voted in favor of the Ordinance's passage
- Marino - voted in opposition to the Ordinance

Junkins and Marino's votes constituted votes in favor of maintaining their extended terms of office, created by the Direct Election of Mayor and Extension of Term of Office Ordinance on June 1, 2021, thereby allowing them to serve an additional year beyond the original four-year term that otherwise would have expired on June 30, 2023.

Count One

January 21, 2021, Vote on First Reading of Direct Election of Mayor and Extension of Terms Ordinance

34. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

35. On **January 21, 2021**, Keith violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on the Direct Election of Mayor and Extension of Terms Ordinance's first reading to extend his term of office. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself even though he voted against his own financial interest.

Count Two

February 4, 2021, Vote on Second and Final Reading of Direct Election of Mayor and Extension of Terms Ordinance

36. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

37. On **February 4, 2021**, Keith violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on the Direct Election of Mayor and Extension of Terms Ordinance's second reading to extend his term of office. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself even though he voted against his own financial interest.

Count Three

April 1, 2021, Vote on Putting Direct Election of Mayor and Extension of Terms Ordinance on the General Election Ballot

38. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

39. On **April 1, 2021**, Keith violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote to put the Direct Election of Mayor and Extension of Terms Ordinance, which would extend his term of office, on the June 1, 2021, General Election ballot. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself.

Count Four

February 2, 2023, Vote on First Reading of Charter Amendment No. 23-4

40. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

41. On **February 2, 2023**, Keith violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on Charter Amendment No. 23-4's first reading which affected the length of his term of office. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself even though he voted against his own financial interest.

Count Five

February 16, 2023, Vote on Second and Final Reading of Charter Amendment No. 23-4

42. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

43. On **February 16, 2023**, Keith violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on Charter Amendment No. 23-4 second and final reading which affected the length of his term of office. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself even though he voted against his own financial interest.

Count Six

February 2, 2023, Vote on First Reading of Ordinance Placing Three Council Seats on Upcoming Ballot

44. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

45. On **February 2, 2023**, Keith violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on the Ordinance Placing Three Council Seats on Upcoming Ballot's first reading which affected the length of his term of office. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself even though he voted against his own financial interest.

Count Seven

February 16, 2023, Vote on Second and Final Reading of Ordinance Placing Three Council Seats on Upcoming Ballot

46. The allegations set forth in paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

47. On **February 16, 2023**, Keith violated the voting provisions in the Ethics Act, W. Va. Code § 6B-2-5(j)(1) and W. Va. Code 6B-2-5(j)(3), by participating in the vote on the Ordinance Placing Three Council Seats on Upcoming Ballot's second and final reading which affected the length of his term of office. He had a financial interest in his term of office because he receives compensation and benefits for serving on City Council and, therefore, violated the Ethics Act by not recusing himself even though he voted against his own financial interest.


Count Eight

Use of Office for Private Gain

48. The allegations set forth in paragraphs 1 through 47 are re-alleged and incorporated herein by reference.

49. Keith used his office for private gain in violation of the Ethics Act, at W. Va. Code § 6B-2-5(b)(1) by knowingly and intentionally participating in the **April 1, 2021**, vote to put the Direct Election of Mayor and Extension of Terms Ordinance, which would extend his term of office, on the June 1, 2021, General Election ballot. Keith had a financial interest in this vote.

Dated: June 23, 2023



Kimberly B. Weber
Executive Director