

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

J. MICHAEL IHLE,

Complaint No. VCRB 2014-126

**Former Mayor of the City of Ravenswood,
Respondent.**

FINAL DECISION AND ORDER

This matter came for consideration before the West Virginia Ethics Commission during its regularly scheduled meeting on August 3, following a public hearing conducted before the Commission's duly appointed hearing examiner on April 26, 2017.

This proceeding arises under the West Virginia Governmental Ethics Act, W. Va. Code § 6B-2-1 through 6B-3-11 ("Ethics Act"). A Verified Complaint was filed against J. Michael Ihle, former Mayor of the City of Ravenswood, West Virginia, on November 12, 2014, which alleged that he had violated the Ethics Act. The Ethics Commission is the duly authorized state agency to enforce the Ethics Act and conduct hearings pursuant to the provisions of W. Va. Code § 6B-2-4.

The Ethics Commission's Probable Cause Review Board, following an investigation, entered an Order on January 25, 2017, finding probable cause to believe that Respondent J. Michael Ihle ("Respondent" or "Ihle") violated W. Va. Code § 6B-2-5(b)(1) and ordering that a Statement of Charges be prepared and that a public hearing be scheduled.

A Statement of Charges and Notice of Hearing was issued on January 26, 2017. The hearing on the Complaint was held in Charleston, West Virginia, on April 26, 2017, with H.F. Salsbery presiding as the independent Hearing Examiner. At the hearing, the Commission was represented by Staff Attorney Theresa M. Kirk. Respondent appeared at the hearing and was not represented by counsel at the hearing. The Commission presented as witnesses Kimberly Benson, Lisa Blake, John Tice, Bo Hoover and Ellen Briggs and introduced 32 exhibits into the record. Respondent presented as a witness Stephanie Butcher and did not introduce any exhibits into the record. A certified court reporter created a stenographic record of the hearing and a transcript of the proceedings.

The Commission, with seven of the Commission members present and voting, considered the record and the Hearing Examiner's "Proposed Findings of Fact and

Conclusions of Law” [hereinafter “Hearing Examiner’s Recommendation”]. Prior to the meeting, Commission members were provided with the hearing transcript; the hearing exhibits; the Ethics Commission’s “Proposed Findings of Fact and Conclusions of Law,” and the West Virginia Ethics Commission’s “Brief in Support of Hearing Examiner’s Proposed Findings of Fact and Conclusions of Law.”

The Hearing Examiner’s Recommendation is attached hereto and is incorporated herein by reference.

FINDINGS OF FACT

The Commission adopts each of the 21 “Findings of Fact” set forth in the Hearing Examiner’s Recommendation with the following modification and addition:

1. In Findings of Fact No.19, “Ex. 11, p. 4” is modified to “Ex. 11, p. 5.”
2. In Findings of Fact No. 21, “Exhibit 18” is added as a reference to the record.

The Commission hereby adopts those proposed Findings of Fact, Conclusions of Law and arguments advanced by the parties that were expressly adopted in the Hearing Examiner’s Recommendation. To the extent that the following Findings or Conclusions are consistent with those advanced by the parties and adopted in the Hearing Examiner’s Recommendation, the same are adopted. Conversely, to the extent that the same are inconsistent with these Findings and Conclusions, they are rejected. To the extent that these Findings or Conclusions are inconsistent with any other proposed Findings and Conclusions submitted by the parties, the same are hereby adopted and, conversely, to the extent that the same are inconsistent with these Findings and Conclusions, they are rejected. To the extent that the testimony of any witness is not in accord with these Findings and Conclusions, the testimony is not credited. Any proposed Finding of Fact, Conclusion of Law or argument proposed and submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

CONCLUSIONS OF LAW

The Commission adopts each of the Hearing Examiner’s 14 recommended “Conclusions of Law” with the following addition and modification:

1. In Conclusions of Law No. 4, “§ 158-6-5.3” is added as a reference.
2. In Conclusions of Law No. 10, “Advisory Opinions 2016-16” is modified to “Advisory Opinion 2016-11.”

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the West Virginia Ethics Commission finds that the evidence beyond a reasonable doubt establishes that J. Michael Ihle materially violated W. Va. Code § 6B-2-5(b)(1) and ORDERS the following sanctions against him:

1. A public reprimand shall be issued against Respondent J. Michael Ihle;
2. Respondent J. Michael Ihle shall pay a fine of \$536.77 to the West Virginia Ethics Commission on or before November 1, 2017;
3. Respondent J. Michael Ihle shall reimburse the West Virginia Ethics Commission the amount of \$2,076.50 for the actual costs of prosecuting his violation of the Ethics Act on or before November 1, 2017;
4. Before holding a public service position or employment in the future, Respondent J. Michael Ihle shall complete training on the West Virginia Ethics Act and shall notify the Commission in writing of his completion of the training.

This Order was entered on the 3rd day of August, 2017.



Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

Received

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

JUN 26 2017

WV Ethics Commission

In Re:

J. MICHAEL IHLE,

Complaint No. VCRB 2014-126

**Former Mayor of the City of Ravenswood,
Respondent.**

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned Hearing Examiner makes the following “Proposed Findings of Fact and Conclusions of Law” and addresses, as a preliminary matter, Respondent Ihle having been informed of his rights under the various applicable statutory provisions including his right to counsel, and that he has also been informed as to the possible penalties which might be imposed. (Hr’g Tr. 19-22, April 26, 2017).

FINDINGS OF FACT

1. The Respondent, J. Michael Ihle (“Respondent” or “Ihle”), at all pertinent times herein served as the duly elected Mayor of the City of Ravenswood, West Virginia.

2. The Respondent became the elected mayor of the City of Ravenswood in 2012. (Hr’g Tr. 37, April 26, 2017).

3. At or around the time he became Mayor, the City of Ravenswood provided Respondent Ihle with a cellular phone, service plan and cellular phone number. The phone was an “iPhone” and the service plan allowed him to make and receive telephone calls and texts and to access the internet. The number for the City of Ravenswood

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cellular phone provided to Respondent Ihle was (304) 532-6710. (Hr'g Tr. 37-39, April 26, 2017).

4. In 2014, Respondent became a candidate for the West Virginia House of Delegates. (Hr'g Tr. 90-91, April 26, 2017 and Ex. 20). Lisa Blake is a Voter Registration Specialist for the West Virginia Secretary of State's Office. She testified that candidates for certain offices are required to file forms with the Secretary of State's Office. (Hr'g Tr. 89-91, April 26, 2017).

5. Lisa Blake testified that Respondent Ihle filed a Candidate's Certificate of Announcement with the West Virginia Secretary of State's Office for his 2014 election campaign for the West Virginia House of Delegates. The form is dated January 25, 2014, and contains the notarized signature of Respondent Ihle. The Candidate's Certificate of Announcement is a public document which may be reviewed by the press or public. (Hr'g Tr. 91-92 and Ex. 20).

6. The 2014 Certificate of Announcement form requests various information, including the filer's telephone number. The form contains one line which reads, "Daytime Phone," and another line which reads, "Campaign Phone." Under the category labeled "Daytime Phone," Respondent Ihle listed as his phone number (304) 532-6710 which is the telephone number for his City cellular phone. Under the category labeled, "Campaign Phone," Respondent Ihle did not list any telephone number. Hr'g Tr. 91-92 and Ex. 20).

7. By contrast, in 2016 when Respondent Ihle filed his Candidate's Certificate of Announcement for the 2016 Partisan Elections with the Secretary of State's Office on January 11, 2016, under the category labeled "Daytime Phone," he left that line blank. On the part of the form requesting his campaign phone number he listed another

telephone number, (304) 802-2199. Nowhere on the 2016 Certificate of Announcement form did Respondent Ihle list his City of Ravenswood cellular phone number. (Hr'g Tr. 94-97 and Ex. 21).

8. Ellen Briggs is an employee of the West Virginia Ethics Commission. Her job title is Special Assistant to the Executive Director. Ms. Briggs testified that certain public officials and others, including candidates for the West Virginia Legislature, are required to file financial disclosure statements with the West Virginia Ethics Commission. Ms. Briggs stated that her job duties include responsibilities relating to the administration of financial disclosure statements filed with the Ethics Commission. (Hr'g Tr. 135-136).

9. On January 25, 2014, in his capacity as a candidate for the West Virginia Legislature, Respondent Ihle filed a Financial Disclosure Statement with the West Virginia Ethics Commission. The contact information sheet for the Financial Disclosure Statement has a space for a filer to list a "daytime telephone" number. There is another space on the form for a candidate to list an "alternative telephone" number. On the January 25, 2014, Financial Disclosure Statement form, Respondent Ihle listed as his daytime telephone number that of his City of Ravenswood provided phone, (304) 532-6710. He did not provide an alternative telephone number. (Hr'g Tr. 137-138 and Ex. 28).

10. Alex Hicks was the treasurer for Respondent Ihle's 2014 campaign for the West Virginia House of Delegates. (Hicks Dep. Tr. 9, attached to record as Ex. 32. See *also* Ex. 5).

11. Mr. Hicks was responsible for filing campaign reports for Respondent Ihle's campaign with the Secretary of State's Office. Mr. Hicks testified that the campaign never

purchased a cellular phone or plan. (Dep.Tr. 9-10, 13 and 18, attached to record as Ex. 32).

12. Mr. Hicks further testified that he had a cellular phone and that the contact number he had in his phone for Respondent Ihle was (304) 532-6710. Mr. Hicks testified that in 2014, if he needed to contact Respondent Ihle on a matter relating to the campaign, he contacted him at (304) 532-6710, the City-owned cellular phone. (Dep. Tr. 10-13, attached to record as Ex. 32 and Ex. 3). Clearly, the City-owned phone was used for campaign purposes.

13. Upon becoming an elected member of the West Virginia House of Delegates, Respondent continued to list his City of Ravenswood cellular phone number, (304) 532-6710, as his outside telephone number for persons wanting to contact him in his capacity as a Member of the House of Delegates.

14. John Tice is an employee of the West Virginia Legislature. He is a graphic designer who assists in producing the Legislative Membership Directory. He collected data from Members of the Legislature for inclusion in the 2015 and 2016 directories. He testified that the contact information Respondent Ihle listed in the 2015 and 2016 membership directories was obtained directly from the Respondent. (Hr'g Tr. 104-108, 118 and Exs. 22 and 26).

15. The cellular phone number issued to Respondent by the City of Ravenswood number is the telephone number listed for Respondent in both the 2015 and 2016 Membership Directories for the West Virginia Legislature. The only other number listed is Respondent's telephone number at the State Capitol. (Hr'g Tr. 104-108 and Exs. 22 and

26). At no point did the Respondent request that his contact information in the 2015 or 2016 directory be changed. (Hr'g Tr. 118).

16. The same cellular phone number, (304) 532-6710, was listed as the business contact number for the Respondent, in his capacity as a Delegate, on the Legislature's public website. (Hr'g Tr. 112-116 and Exs. 22, 23, 24, 25 and 26).

17. Respondent Ihle did not testify. He did not introduce any exhibits.

18. Respondent Ihle called one witness, Stephanie Butcher. He did not disclose this witness in accordance with the time frames established by the Ethics Commission's Procedural Rule at W. Va. Code R. § 158-17-6.2. Further, at no point until he called her as a witness did he disclose to the Hearing Examiner or opposing counsel that he had a witness he intended to call and that she was sitting in the public hearing room during the entire course of the proceeding. Therefore, Counsel for the West Virginia Ethics Commission did not have the opportunity to request that witness Butcher be sequestered. In contrast, all the Ethics Commission witnesses were properly disclosed and sequestered. Nonetheless, the undersigned permitted her to testify.

19. The testimony of Ms. Butcher must be viewed with particular care based on the demeanor of the witness at the hearing, the fact she was not timely disclosed and the fact she was not sequestered.¹ Additionally, in the opinion of the undersigned Ms. Butcher's position as a volunteer for, and financial contributor to, Respondent Ihle's campaign. (Hr'g Tr. 154) require that her testimony be carefully scrutinized. See also Ex. 5, p. 2 (reflecting \$25 contribution from Butcher on March 11, 2014); Ex. 7, p. 2 (reflecting

¹ Had she been timely disclosed, the Ethics Commission would have had the opportunity to interview her or move for leave to take her deposition, W. Va. Code R. § 158-17-6.6. Moreover, counsel for the Commission would have been entitled to have her sequestered during the hearing.

\$50 contribution from Butcher on April 12, 2014), and Ex. 11, p. 4 (reflecting \$400 in-kind contribution from Butcher on June 7, 2014). Lastly, the undersigned recognizes an inconsistency in Ms. Butcher's testimony in that her memory was excellent with regard to those matters which, on their face, supported Respondent's position(s). However, her memory was less fulsome when she was asked about matters which, on their face, would have supported the Ethics Commission's case. (See Hr'g Tr. 162-164)

20. Respondent Ihle never denied that he used his City-owned cellular phone and related plan as part of his election campaign.

21. The cost of the cellular phone and the unlimited plan to the City of Ravenswood from January 9, 2014, until November 8, 2014, was \$536.77. (Hr'g Tr. 40-47 and Hr'g tr. 49-50).

CONCLUSIONS OF LAW

1. The Respondent, Michael Ihle, during his tenure as the Mayor of the City of Ravenswood, West Virginia, was a public official within the meaning of the West Virginia Governmental Ethics Act. W. Va. Code § 6B-1-3(k).

2. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act committed by West Virginia public officials, including the Respondent. W. Va. Code §§ 6B-1-1 through 6B-2B-6.

3. Public officials are prohibited from knowingly and intentionally using their public office for private gain. W. Va. Code § 6B-2-5(b). The Code provision reads in relevant part:

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.

4. The Commission's Legislative Rule, W. Va. Code R. § 158-6-5.2, reads:

Improper Use - Public officials and public employees shall not use government property for personal projects or activities that result in private gain. This subsection does not apply to the de minimis use of government property.

5. Black's Law dictionary defines *de minimis* as: "1. Trifling; minimal. 2. (of a fact or thing) so insignificant that a court may overlook it in deciding an issue or case" *De minimis*, Black's Law Dictionary (9th ed. 2009). While Respondent Ihle's prohibited use of his City of Ravenswood phone could be argued to have been minimal, it was not *de minimus*.

6. The prior Advisory Opinions of the Ethics Commission make it clear that public resources may not be used for campaign purposes.

7. In Advisory Opinion 1995-34 (Revised), the Ethics Commission held that:

The office space, stationary, phones and other items provided to public servants for use in the performance of their official, public responsibilities may not be used to subsidize what is essentially a private effort, i.e. raising funds for a political campaign.

Therefore it would be a violation of the Act's prohibition against use of office for the private gain of another for the requester to use the office space, stationery, phones and other items provided for use in the performance of his official, public responsibilities to solicit campaign contributions for himself or another candidate.

8. In Advisory Opinion 1996-14, a county employee asked if it would violate the Ethics Act for him to seek election to the position of county magistrate. The Commission ruled there is no provision in the Ethics Act which prohibited him from seeking election to county office; however, the Commission imposed restrictions. The Commission ruled:

Although in this instance, there is no evidence that such actions have occurred, the Commission would remind the requester that pursuant to WV Code 6B-2-5(b)(1) a public employee may not use his public position for his own private gain. The Commission's legislative rules on private gain expressly prohibit the use of public time, equipment, materials and resources for private activities. (See 158 CSR 6-5.2 and 6-8) Clearly, the office space, phones, stationary and other items provided to the public employee for use in the performance of his public responsibilities may not be used to subsidize an election campaign.

9. In Advisory Opinion 2012-52, the Ethics Commission held that a municipality may not permit its officials or employees to use public equipment for personal purposes. The Ethics Commission concluded a "governing body may not permit the use of public equipment by public employees except for public purposes." It further held: "Additionally, elected or appointed members of a governing body are similarly prohibited from using public equipment. To permit their use of public equipment would unlawfully confer additional compensation to them." *Id.* n.1. The Commission reasoned in its Opinion:

Even if an individual's use does not result in a cost to the government; still, the individual benefitted from the use of public equipment. Absent access to the use of public equipment, the individual would have incurred the expense of renting or purchasing the equipment.

10. In Advisory Opinion 2016-16, the Ethics Commission authorized a State Legislator to purchase business cards with private funds. The business cards contained campaign information. The Opinion states, "The Commission cautions the Requester that

the Ethics Act prohibits any use of state resources, including his state telephone and email, address, in furtherance of his personal re-election campaign.”

11. The evidence proves beyond a reasonable doubt that Respondent used the City-owned cellular phone and related service plan as part of his 2014 election campaign to the West Virginia House of Delegates. While the City of Ravenswood may not have incurred additional expense as a result of Respondent Ihle’s use of the cellular phone and plan in the 2014 election proof of loss is not required. Instead, the Commission must only prove that Respondent Ihle unlawfully used public resources available to him as an elected Mayor to subsidize his successful election to another public position, and that proof was ample and uncontradicted here.

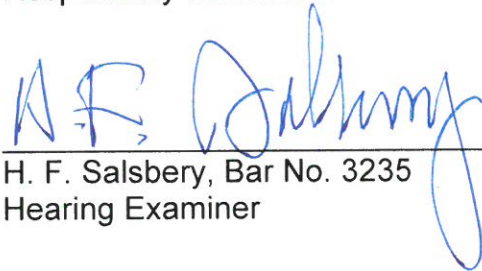
12. The *de minimis* exception does not relieve the Respondent of his intentional and illegal use of the City’s cellular phone. The *de minimis* exception only applies when two elements are satisfied: First, the public official’s use must be incidental. Second, the resulting private gain must be trifling. Neither was the case here.

13. The Respondent’s knowing and intentional act of listing his City of Ravenswood number on official forms required to be filed by candidates for the West Virginia Legislature and allowing the use of his number for campaign related purposes is not an “incidental use” of public equipment by a public official, and constitutes a direct use of public resources to subsidize a political campaign. This conduct clearly violates the plain language of the Ethics Act and the directive of the Ethics Commission in past Advisory Opinions, including Advisory Opinion 1996-14, wherein the Commission expressly held that public servants may not use “office space, phones, stationary and

other items provided to the public employee for the use in the performance of his public responsibilities to . . . subsidize an election campaign.”

14. The cost of Respondent purchasing a comparable cellular plan for use in his campaign, instead of using the cellular phone and plan paid for by the City of Ravenswood, is \$536.77. That amount is not trifling or *de minimis*, particularly when the average citizen must pay for this expense with private or campaign funds, not taxpayer funds. The Ethics Commission has analyzed this issue and has concluded: “Even if an individual’s use does not result in a cost to the government; still, the individual benefitted from the use of public equipment. Absent access to the use of public equipment, the individual would have incurred the expense of renting or purchasing the equipment.” The Respondent’s use of the City’s cellular phone, service plan and number for a political campaign is not *de minimis*, particularly when the cost of the use of the technology during the relevant time is \$536.77.

Respectfully submitted:



H. F. Salsbery, Bar No. 3235
Hearing Examiner

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

J. MICHAEL IHLE,

Complaint No. VCRB 2014-126

**Former Mayor of the City of Ravenswood,
Respondent.**

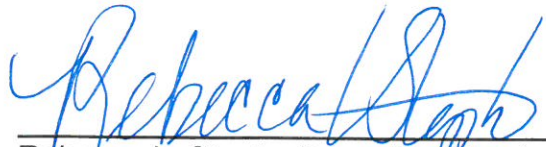
CERTIFICATE OF SERVICE

I, Rebecca L. Stepto, Executive Director of the West Virginia Ethics Commission, certify that I mailed a true and complete copy of the foregoing **FINAL DECISION AND ORDER** via regular United States Mail, postage prepaid, and via certified, return receipt requested, United States Mail, postage prepaid, on August 3, 2017, to:

Michael Ihle
507 Sand Street, Apartment A
Ravenswood, WV 26164
mihle9@gmail.com
Respondent

and via email and hand delivery to:

Theresa M. Kirk, Staff Attorney
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Counsel for Complainant



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November 2, 2017

PERSONAL AND CONFIDENTIAL

Michael Ihle
507 Sand Street, Apartment A
Ravenswood, WV 26164

Re: VCRB 2014-126
Katherine Garrett, et al., Complainants v. J. Michael Ihle, Respondent

Dear Mr. Ihle:

This will confirm that you have paid the \$536.77 fine and the prosecutorial costs of \$2,076.50 to the West Virginia Ethics Commission as required by the Final Decision and Order dated August 3, 2017.

You have therefore fulfilled your obligations under the Final Decision and Order and the above-referenced Complaint will be closed.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca L. Stepto".

Rebecca L. Stepto
Executive Director

/rls