

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

**VCRB 2009-33 & CIC 2010-06, Respondent Jeffrey Hutchinson, Director
Kanawha County Parks and Recreation**

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Jeffrey Hutchinson freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from the above-referenced complaints.

FINDINGS OF FACT

After a thorough investigation of all the claims and allegations set forth in the aforementioned Complaints and related Statements of Charges, the following facts are hereby stipulated and agreed upon by the West Virginia Ethics Commission and Jeffrey Hutchinson, and are taken as true and correct:

1. Jeffrey Hutchinson (Respondent) is the Director of the Kanawha County Parks and Recreation Commission (KCPRC), and has served in this capacity at all times relevant herein.

VCRB 2009-33

2. On or about December 23, 2009, as amended on December 28, 2009, the West Virginia Ethics Commission (Commission) received a complaint against Respondent. The complaint alleged numerous violations of the Ethics Act.

3. On or about December 21, 2011, the two participating members of the

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Probable Cause Review Board unanimously voted to enter an Order finding probable cause to believe that the Respondent violated W. Va. Code §§ 6B-2-5(b) & (c).

4. The Probable Cause Review Board is charged with investigating ethics complaints, and is not the final trier of fact.

5. As required by W. Va. Code § 6B-2-4(f), the Ethics Commission issued a Statement of Charges that Respondent:

COUNT I

Used his public office for personal gain, to wit: by driving KCPRC issued vehicle for personal use including without limitation, transporting his son to/from school on more than a *de minimis* basis; obtaining services to have personal golf clubs repaired using KCPRC's account with a vendor; and, by making personal purchases of a lead sled and head lamp using the KCPRC issued credit card;

COUNT II

Used his public office for the personal gain of others, to wit: by providing discounted or free use of KCPRC facilities to certain individuals and/or organizations in the absence of any KCPRC policy related thereto; specifically by personally providing discounted or free use of KCPRC shelters and/or banquet rooms to select individuals or groups, including groups with which he and/or his friends are associated; and, by allowing his friend/associate Brent Pauley to purchase golf clubs on a KCPRC account and carry the balance for about a year; and,

COUNT III

Knowingly accepting gifts from persons who were doing business with KCPRC, to wit: annually accepting for personal consumption, gift baskets from KCPRC's payroll services provider Service Plus Inc.; and, on or about November and/or December 2009, accepting free merchandise from a vendor of golf equipment and supplies, Cleveland Golf at or around the time that KCPRC placed an order with Cleveland.

6. When Respondent negotiated his current employment contract with KCPRC, he was provided the use of a vehicle due to his position. The KCPRC board never defined, orally or in writing, any policy or limitation regarding the scope of his use of said vehicle.

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7. The KCPRC does not have a written policy regarding free or discounted use of facilities for non-employees. Respondent and the KCPRC Board state that it has been the KCPRC's practice, since even before Respondent began working for the park system, for the KCPRC Director and other employees to provide the use of facilities for free or at discounted rates to engender "good will" among repeat customers and certain charitable and non-profit entities that provide free assistance to the park system.

8. The Commission previously sanctioned Respondent for ethics violations. Specifically, on April 3, 2008, Complaint VCRB 2007-13, alleging that Respondent had accepted free merchandise from vendors, was resolved by a Conciliation Agreement which imposed the following sanctions: an Order to Cease and Desist from accepting free merchandise from vendors; an Order to reimburse the Kanawha County Parks and Recreation Commission \$360 for the value of a pair of free golf shoes received by Respondent; and a \$100 fine.

9. Respondent further agreed in the prior Conciliation Agreement as follows: "I further agree that in the future, I will contact the Ethics Commission to ascertain whether the acceptance of free merchandise is acceptable under any circumstances other than those which the Commission has previously specifically authorized."

10. According to Respondent, in November or December 2009, Respondent received golf equipment from a representative of Cleveland Golf, another vendor of golf equipment and supplies, at or around the time that KCPRC placed an order with Cleveland Golf. Respondent later returned the equipment to the Cleveland Golf representative in its unopened original packaging. The Cleveland Golf representative executed a sworn affidavit averring that Respondent did not take the equipment for his JRH (initials)

personal use and that Respondent was only was holding the equipment for the representative until the representative could donate it to a youth golf clinic.

11. The Ethics Commission's Probable Cause Review Board has reviewed evidence independently obtained in the course of the investigation that the Review Board believes contradicts Respondent's assertions in paragraph 10 above and calls into question the credibility of the Cleveland Golf representative.

12. Respondent did not contact the Ethics Commission to ascertain whether his receipt of the golf equipment from Cleveland Golf was permitted under the terms of his April 3, 2008 Conciliation Agreement.

CIC 2010-06

13. On or about August 9, 2010, the Commission initiated a complaint against Respondent, alleging violations of the Ethics Act.

14. On or about December 21, 2011, the two participating members of the Probable Cause Review Board, unanimously voted to enter an Order finding probable cause to believe that the Respondent violated W. Va. Code § 6B-2-5(b).

15. The Probable Cause Review Board is charged with investigating ethics complaints, and is not the final trier of fact.

16. As required by W. Va. Code § 6B-2-4(f), the Ethics Commission issued a Statement of Charges charging that Respondent:

COUNT I

Without the advance notice or approval of the KCPRC board, used his public office for personal gain by unilaterally paying himself \$500 cash from KCPRC funds for providing golf instruction during the Junior Golf Clinic held on September 13, 2008 at Coonskin Park; and,

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COUNT II

Without the advance notice or approval of the KCPRC board, used his public office for the personal gain of others by unilaterally using KCPRC funds to: provide \$500 cash each to four local golf professionals for providing golf instruction during the Junior Golf Clinic; and, provide \$100 cash additional compensation each to two subordinate employees who worked during the Junior Golf Clinic.

17. Respondent is a salaried employee and does not punch a time clock or complete a time sheet. The Chair of the KCPRC Personnel Committee, who also was the KCPRC Vice President at the time, executed a sworn affidavit averring that the provision of golf lessons was not within the scope of Respondent's job responsibilities as KCPRC Director. Respondent states that, on the day of the golf clinic, Saturday, September 13, 2008, he was not scheduled to work and that he believed the payment for his services was in compliance with the below-referenced West Virginia Ethics Commission Advisory Opinion 2008-05 because Respondent was not scheduled to work that day. Respondent did not submit a timesheet claiming that he worked on Saturday, September 13, 2008. He did not seek advice from the Ethics Commission whether the referenced payment did comply with Advisory Opinion 2008-05.

18. On June 23, 2009, the KCPRC Board held a special meeting to address a board member's concerns over the golf clinic and Respondent paying him and others in cash for working at the clinic. After the June 23, 2009 meeting, the KCPRC Board changed its bylaws to state that the KCPRC Director is considered "on duty" when physically present at an event hosted by the KCPRC or held on KCPRC grounds, regardless of the day or time of day. In addition, the bylaws were amended to prohibit the Director from receiving payment for services rendered over and above his or her regular salary while he or she is "on duty", irrespective of the service being provided or JKH (initials)

the source of the payment. Furthermore, Respondent paid his own annual PGA dues of approximately \$500 that year, which in years past had been paid by the KCPRC.

RELEVANT LEGAL PROVISIONS

West Virginia Code § 6B-2-5(b) provides, in relevant part, that a public official or public employee may not knowingly and intentionally use her or his office or the prestige of her or his office for her or his own private gain or that of another person. West Virginia Legislative Rule § 158-6-5 generally prohibits the use of government property for personal projects or activities that result in private gain.

West Virginia Code § 6B-2-5(c)(1)(A) prohibits a public employee from knowingly accepting any gift, directly or indirectly, from any person whom the employee knows or has reason to know is doing or seeking to do business of any kind with his or her agency.

In Advisory Opinion 2008-05, the Ethics Commission ruled that Parks and Recreation Commission (PRC) employees could accept compensation for providing private golf lessons at their employers' public facilities so long as they clocked out to avoid double dipping.

CONCILIATION

I, Jeffrey Hutchinson, Director of the Kanawha County Parks and Recreation Commission, believe that it is in my best interest and the interest of the public to resolve the above-captioned complaints without further proceedings.

I freely and voluntarily acknowledge that the Ethics Act prohibits me from

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accepting anything of value, in excess of \$25 per calendar year, from an interested person, including vendors or companies doing business with KCPRC. I understand that I may only accept free merchandise for KCPRC use. I further understand that if I accept free merchandise for personal use or for the personal use of my friend(s) or family that constitutes the prohibited use of office for private gain. Further, any free merchandise provided as an incentive for placing an order belongs to KCPRC, not to me and/or the individual placing the order. Finally, the Ethics Act prohibits me from accepting merchandise, even if unrelated to an order, from a vendor for my personal use or the personal use of my friend(s) or family.

I agree that I will cease and desist from using my county vehicle for personal trips, unless and until the KCPRC Board adopts a vehicle use policy consistent with the West Virginia Ethics Act.

I agree that a written KCPRC policy consistent with the West Virginia Ethics Act regarding the use of KCPRC facilities on a free or discounted basis is advisable so as to avoid the appearance of or actual misuse of public resources for the personal gain of others. I further agree to propose the development and adoption of such a policy with the KCPRC board.

I agree that I will not personally accept anything of value, in excess of \$25 per calendar year, from an interested person, including vendors or companies doing business with KCPRC. I freely and voluntarily acknowledge that the acceptance of free merchandise from an interested person is only acceptable under the Ethics Act under the conditions previously set forth by the Ethics Commission in the prior Conciliation Agreement resolving Complaint VCRB 2007-13 and the correspondence referenced JKH (initials)

therein; Provided, that I may test free merchandise provided by a vendor as long as it is returned afterward to the vendor or placed in the inventory of the park system.

Further, I acknowledge that, I should have contacted the Ethics Commission to ascertain whether my taking receipt of the aforementioned Cleveland Golf merchandise was permissible under the prior Conciliation Agreement and the Ethics Act. I further agree that in the future, I will contact the Ethics Commission to ascertain whether taking receipt of free merchandise is acceptable under any circumstances other than those which the Commission has specifically authorized.

I understand that in order for this Conciliation Agreement to be finalized, the Commission must approve it and must further make a determination concerning which, if any, sanctions to impose. In the event the Commission enters an Order imposing any sanction other than those specifically set forth below, then this Conciliation Agreement is null and void and the complaints shall be scheduled for a public hearing on the merits before the already appointed hearing examiner.

In consideration for the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

- (1) Public Reprimand;
- (2) A Cease and Desist Order prohibiting me from:
 - a. accepting anything of value greater than \$25 per calendar year from interested persons even temporarily, without first contacting the Ethics Commission to ascertain whether the said acceptance is permissible;
 - b. using the County vehicle for personal trips unless and until KCPRC adopts a vehicle use policy, subject to the approval of the West Virginia Ethics Commission; and
 - c. using KCPRC's public resources for the personal benefit of myself or others.

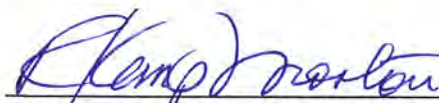
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(3) A Fine not to exceed \$1,500, payable in three installments of \$500.00, with the first, second, and third installments due 30, 90, and 150 days, respectively, after the effective date of this Conciliation Agreement.

I understand that pursuant to W. Va. Code § 6B-2-4(s), the Conciliation Agreement and Order must be made available to the public.

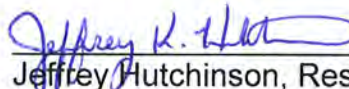
This Conciliation Agreement hereby settles and resolves all claims set forth in VCRB 2009-33 and CIC 2010-06, as well as any other claims that could have been made against Respondent arising out of the facts or events set forth in said Complaints.

Date: 4-4-13



R. Kemp Morton, Chairperson
WV Ethics Commission

Date: 4-4-13



Jeffrey Hutchinson, Respondent

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BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

VCRB 2009-33 & CIC 2010-06, Respondent Jeffrey Hutchinson, Director
Kanawha County Parks and Recreation

COMMISSION'S ORDER

After considering the foregoing FINDINGS OF FACT, RELEVANT LEGAL PROVISIONS and CONCILIATION OF VIOLATION, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and the Respondent, as required by West Virginia Code § 6B-2-4(r). In accordance with West Virginia Code § 6B-2-4(q), the Commission imposes the following sanctions:

- (1) Jeffrey Hutchinson shall be, and hereby is, **PUBLICLY REPRIMANDED**;
- (2) The West Virginia Ethics Commission hereby Orders that Jeffrey Hutchinson pay a fine of \$1,500.00, payable to the West Virginia Ethics Commission. The fine is to be paid as follows: \$500 within thirty (30) days of the entrance of this Order, and \$500 to be paid in two equal installments 90 days and 150 days thereafter; and
- (3) Jeffrey Hutchinson shall **Cease and Desist** from:
 - a. accepting anything of value greater than \$25 per calendar year from interested persons, even temporarily, without first contacting the Ethics Commission to ascertain whether the said acceptance is permissible;
 - b. using the County vehicle for personal trips unless and until KCPRC adopts a vehicle use policy, subject to the approval of the West Virginia Ethics Commission; and
 - c. using KCPRC's public resources for the personal benefit of myself or others.

The Commission hereby finds these complaints were filed in **good faith**.

Date

04/04/13


R. Kemp Morton, III Chairperson
W. Va. Ethics Commission