

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

WEST VIRGINIA ETHICS COMMISSION,
Petitioner,

v.

CIC 2012-01

ROBIN C. CAPEHART,
Respondent.

STATEMENT OF CHARGES AND NOTICE OF HEARING

This Statement of Charges is issued pursuant to the unanimous vote of the Probable Cause Review Board of the West Virginia Ethics Commission, which entered an Order on January 21, 2015, finding that there is probable cause to believe that Robin C. Capehart, the Respondent in the above-referenced Complaint, violated the provisions of W.Va. Code § 6B-2-5(b) as follows:

STATEMENT OF CHARGES

In accordance with the probable cause Order, it is hereby ALLEGED and CHARGED that Respondent violated the Ethics Act as follows:

1. Robin C. Capehart ("Respondent") is the President of West Liberty University in West Liberty, West Virginia, having assumed that position on July 1, 2007. Mr. Capehart was President of West Liberty University at all times material herein.
2. Respondent is a public official and as such is subject to the provisions of the West Virginia Governmental Ethics Act ["Ethics Act"] in W.Va. Code § 6B-1-1 *et seq.*

COUNT 1

From in or about November 2010 through March 2012, Respondent did, both personally and through his private business entity, Flyover Films, LLC, have an interest in the profits and benefits of contracts between Kristen Seibert ("Seibert") and West Liberty University, which contracts Respondent had the authority to enter into and over which he had control, in violation of W.Va. Code §6B-2-5(d)(1). In furtherance of said violation, Robin C. Capehart engaged in or had authority and control over the following acts:

(a) On or about January 29, 2010, Seibert was hired effective January 1, 2010, as a "temporary" employee of West Liberty University through June 30, 2010, to produce a show for WLTV entitled "Concert in the Kitchen" at a pay rate of \$250 per show. On June 29, 2010, her

contract was renewed for the period from July 1, 2010, through June 30, 2011, for the same purpose and at the same rate of pay.

(b) In or about November 2010, Robin C. Capehart and Seibert entered into a business relationship for the production and promotion of full-length motion pictures.

(c) Pursuant to a new contract dated November 12, 2010, but effective November 1, 2010, Seibert was hired by West Liberty University through June 30, 2011, for "part-time business management of the University's television station and the production of new programs in cooperation with WLTV's existing staff and students." Seibert's contract called for her to provide services for a minimum of 28 hours per week at a pay rate of \$2,000 per month.

(d) On December 1, 2010, Respondent organized Hartland Entertainment, LLC, as a West Virginia limited liability company for profit. Hartland Entertainment, LLC, was member-managed and Respondent was the only person listed with the Office of the Secretary of State of West Virginia as a member.

(e) On December 1, 2010, Respondent and Hartland Entertainment, LLC, organized Flyover Films, LLC, as a West Virginia limited liability company, for profit. Flyover Films, LLC, is member-managed and Seibert is listed with the Office of the Secretary of State as the manager. The business purpose of Flyover Films, LLC, is stated as "Motion Picture and Sound Recording Industries - Motion Picture and Video Industries (drive-in, postproduction, teleproduction)." The charter for Flyover Films, LLC, remained active at all times material herein.

(f) On or about July 19, 2011, Seibert and West Liberty University entered into a Professional Services Agreement, effective July 1, 2011, whereby Seibert would provide consulting services to the university through June 30, 2012, at a pay rate of \$4,000 per month.

(g) During the month of March, 2012, Seibert was actively engaged in her work on behalf of Flyover Films, LLC, as producer of the film, "Random Acts of Christmas," while, during the same time, working on behalf of West Liberty University under the July 1, 2011 - June 30, 2012 contract.

(h) In March 2012, Seibert submitted an invoice in the amount of \$4,000 for her consulting work on behalf of West Liberty University during March 2012, which was approved for payment by her supervisor on or about March 26, 2012.

(i) On March 28, 2012, the Complaint and Notice of Investigation in this matter were sent via certified mail to Respondent. Said Complaint and Notice of Investigation were received by Respondent on Friday, March 30, 2012. Seibert was asked to resign from her employment with West Liberty University that same day. She did so, and in return for submitting her resignation, Seibert was given a promise by Robin C. Capehart of future employment at West Liberty University.

(j) On or about April 25, 2012, the Chief Financial Officer of West Liberty University requested that Seibert confirm her termination with a letter of resignation back-dated to February 15, 2012, to make it appear that she had resigned as of February 29, 2012. She complied.

COUNT 2

From in or about November 2010 through March 2012, Robin C. Capehart solicited private business from a subordinate public employee, Kristen Seibert, who he had the authority to direct, supervise and control, in violation of W.Va. Code §6B-2-5(o). In furtherance of said violation, Robin C. Capehart engaged in or had authority and control over the acts set forth in Count 1, subparagraphs (a) through (j), each of which is incorporated by reference herein.

COUNT 3

On August 4, 2011, Robin C. Capehart did knowingly and intentionally use his public office for his own private gain in violation of W.Va. Code §6B-2-5(b), by engaging in personal business unrelated to his duties as President of West Liberty University when he participated in a promotional tour for "Doughboy," a film for which Respondent was the Executive Producer and which was produced by his company, Flyover Films, LLC, to Beckley, Charleston and Huntington, West Virginia. He did not take annual leave or leave without compensation for this time.

COUNT 4

On August 11 and 12, 2011, Robin C. Capehart did knowingly and intentionally use his public office for his own private gain in violation of W.Va. Code §6B-2-5(b), by engaging in personal business unrelated to his duties as President of West Liberty University when he participated in a promotional tour for "Doughboy," a film for which Respondent was the Executive Producer and which was produced by his company, Flyover Films, LLC, to Huntington, Charleston and Beckley, West Virginia. He did not take annual leave or leave without compensation for this time.

COUNT 5

On August 12, 2011, Robin C. Capehart, while engaged in a promotional tour for "Doughboy," a film for which he was the Executive Producer and which was produced by his company, Flyover Films, LLC, to Huntington, Charleston and Beckley, West Virginia, did knowingly and intentionally use his public office for his own private gain and the private gain of Flyover Films, LLC, in violation of W.Va. Code §6B-2-5(b), when he incurred the following film-related personal expenses which were charged to the State of West Virginia through his P-card, without reimbursement:

August 12, 2011	Fairfield Inn, Beckley	\$86.24 (P-card)
August 12, 2011	Gas, GetGo, Washington, PA	\$50.99 (P-card)

COUNT 6

From in or about December 2010 to in or about March 2011, Robin C. Capehart did knowingly and intentionally use his public office for his own private gain and the private gain of his company, Flyover Films, LLC, in violation of W.Va. Code §6B-2-5(b), when he and Flyover Films, LLC, used computer equipment issued by West Liberty University and owned by the State of West Virginia for the production and promotion of films without making payment for the use of such equipment.

COUNT 7

On or about August 9, 2011, and on or about August 16, 2011, Robin C. Capehart did knowingly and intentionally use his public office and the prestige of his public office for his own private gain and the private gain of his company, Flyover Films, LLC, in violation of W.Va. Code §6B-2-5(b), when he and his company, Flyover Films, LLC, used Jeff Knierim, an employee of West Liberty University, while “on the clock” for the State of West Virginia, to promote the film “Doughboy,” a film for which he was the Executive Producer and which was produced by his company, Flyover Films, LLC, without reimbursing the State of West Virginia for Knierim’s time.

COUNT 8

On or about August 9, 2011, and on or about August 16, 2011, Robin C. Capehart solicited private business from Jeff Knierim, a subordinate public employee of Respondent at West Liberty University, who he had the authority to direct, supervise and control, in violation of W. Va. Code §6B-2-5(o).

COUNT 9

On or about August 9, 2011, and on or about August 16, 2011, Robin C. Capehart did knowingly and intentionally use his public office for his own private gain and the private gain of his company, Flyover Films, LLC, in violation of W. Va. Code §6B-2-5(b), by having the Media Center of West Liberty University use its resources and equipment to produce “Your Town” as promotional television shows for “Doughboy,” a film for which he was the Executive Producer and which was produced by his company, Flyover Films, LLC, without making payment for such services.

COUNT 10

From or about August 11, 2011, to on or about August 23, 2011, Robin C. Capehart did knowingly and intentionally use his public office for his own private gain and the private gain of his company, Flyover Films, LLC, in violation of W. Va. Code §6B-2-5(b), by having the Media Center of West Liberty University use its resources and equipment to broadcast the August 9 and August 16, 2011, “Your Town” shows as one-half hour promotions 62 times on WLTV, channel 14, a West Liberty University owned and operated television station, for a total of 31 hours of broadcast time, without making payment for such services.

COUNT 11

From or about August 17, 2011, to on or about August 23, 2011, Robin C. Capehart did knowingly and intentionally use his public office for his own private gain and the private gain of his company, Flyover Films, LLC, in violation of W.Va. Code §6B-2-5(b), by having the Media Center of West Liberty University use its resources and equipment to broadcast a 30-second promotion for "Doughboy," a film produced by Flyover Films, LLC, 20 times on WLTV, channel 14, a West Liberty University owned and operated television station, without making payment for said services.

COUNT 12

On or about August 17, 2011, Robin C. Capehart did knowingly and intentionally use his public office and the prestige of his office for his own private gain and the private gain of his company, Flyover Films, LLC, in violation of West Virginia Code §6B-2-5(b), when he directed the West Liberty University Office of Institutional Advancement to purchase three tables at the Light of the Valley luncheon, a fund-raiser for the Wheeling YMCA, as a promotion for "Doughboy," and had both the screenwriter and the director of Doughboy attend the luncheon and sit in the seats for which West Liberty University had paid \$250.00 each.

COUNT 13

On or about November 14, 2012, while in Gainesville, Texas, to introduce his company's "Doughboy" film at a Veteran's Day program, Robin C. Capehart did knowingly and intentionally use his public office for his own private gain in violation of W.Va. Code §6B-2-5(b), when he charged his rental vehicle to his State of West Virginia P-card in the amount of \$276.89, without making reimbursement therefor.

NOTICE OF HEARING

Notice is hereby given that a PUBLIC HEARING will be held beginning on April 16, 2015, at 9:00 a.m. at the offices of the Ethics Commission, 210 Brooks St., Suite 300, Charleston, WV, to determine the truth or falsity of the charges against that Respondent Robin C. Capehart contained in the foregoing Statement of Charges. The hearing will continue until completed.

In accordance with W. Va. Code § 6B-2-4 and W.Va. C.S.R. § 158-17-1 et seq., the Ethics Commission will appoint an independent hearing examiner to preside at the hearing. The record compiled by the hearing examiner will then be submitted to members of the Ethics Commission for a final decision.

Dated: Jan. 23, 2015


Rebecca L. Stepto
Executive Director

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

WEST VIRGINIA ETHICS COMMISSION,
Petitioner,

v.

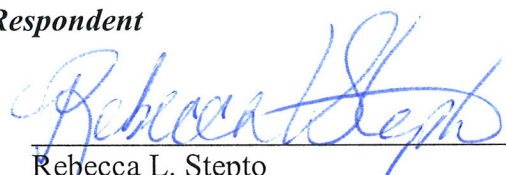
CIC 2012-01

ROBIN C. CAPEHART,
Respondent.

CERTIFICATE OF SERVICE

I, Rebecca L. Stepto, Executive Director for the West Virginia Ethics Commission, do hereby certify that I have, this 23rd day of January, 2015, served a true and complete copy of the foregoing *Statement of Charges and Notice of Hearing*, via certified mail, return receipt requested, upon:

Robert P. Fitzsimmons, Esq.
Fitzsimmons Law Firm
1609 Warwood Avenue
Wheeling, WV 26003-7110
Counsel for Respondent



Rebecca L. Stepto
Executive Director
West Virginia Ethics Commission
210 Brooks St., Suite 300
Charleston, WV 25301
(304) 558-0664
(304) 558-2169 (fax)