Advisory Opinion 2017-03

Issued on February 2, 2017, by

The West Virginia Ethics Commission

Opinion Sought

A **State Agency** asks whether its directors and deputy directors are required to file Financial Disclosure Statements.

Facts Relied Upon By the Commission

The Requester states that it is "headed" by three Commissioners appointed by the Governor. The Requester acknowledges that its Commissioners are required to file Financial Disclosure Statements. The Requester additionally states that it is organized into 14 separate divisions, each of which has a division head. The Requester states that 10 of the 14 division heads have the word "Director" in their civil service titles. The Requester further states that there are eight individuals that function as assistant division heads, but that only three of these individuals have the words "Deputy Director" in their civil service titles.

The Requester asks whether its directors and deputy directors are required to file Financial Disclosure Statements. The Requester additionally requests extensions for the affected individuals to file Financial Disclosure Statements if the Ethics Commission decides that these individuals are required to file.

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.

(d) The Ethics Commission may, upon request of any person required to file a financial disclosure statement, and for good cause shown, extend the deadline for filing such statement for a reasonable period of time: Provided, That no extension of time shall be granted to a candidate who has not filed a financial disclosure statement for the preceding filing period.

Advisory Opinion

The Ethics Act requires that certain public servants and candidates file Financial Disclosure Statements. 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 2014-13 (citing Advisory Opinion 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. W.Va. Code § 6B-2-6(a)(1). "All 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 Legislature stated that 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) *(emphasis added)*

As it pertains to the Requester's inquiry, the Legislature expressly included directors and deputy directors among those persons required to file Financial Disclosure Statements. W.Va. Code § 6B-2-6(a)(3). The Ethics Commission further concluded in Advisory Opinion 2014-13 that a Division Director of a State Agency was required to file a Financial Disclosure Statement given that directors were expressly included in W.Va. Code § 6B-2-6(a)(3). The Requester nonetheless maintains that Advisory Opinion 2014-13 incorrectly interpreted W.Va. Code § 6B-2-6(a)(3) for two reasons. The Requester first asserts that the language used in W.Va. Code§ 6B-2-6(a)(3) evinces a legislative intent to include only those persons who are heads of agencies. Additionally, the Requester professes that requiring its directors and deputy directors to file financial disclosures

would constitute an inequitable and inconsistent result because other division heads and assistant division heads not holding the titles of director or deputy director would not be required to file. The Commission will address each of the Requester's arguments.

The Requester first argues that the legislative intent behind W.Va. Code § 6B-2-6(a)(3) was to cover only those persons who are heads of agencies. To support this contention, the Requester points to W.Va. Code § 6B-2-6(a)(3) being passed in the same legislative session in 1989 as the creation of the Cabinet Secretary structure under W.Va. Code §§ SF-1-1 through SF-3-3. The Requester also states that this intent can be confirmed by looking at the structure of the executive branch of state government as set out in the 1986 West Virginia Blue Book. The Commission disagrees with this approach.

The Requester invites the Commission to look to outside sources to determine the intent of the Legislature in enacting W.Va. Code § 6B-2-6(a)(3). To the contrary, the plain meaning of W.Va. Code § 6B-2-6(a)(3) must first be considered to determine legislative intent. *See King v. West Virginia's Choice, Inc.,* 234 W.Va. 440, 766 S.E.2d 387 (2014) ("In addition to requiring courts to apply a statute by giving words the meaning commonly attributed to them, we have further instructed that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.") (internal quotations omitted); *See also Stinson v.* Com., 396 S.W.3d 900, 903 (Ky.2013) (internal citations omitted) ("The plain meaning of the statutory language is presumed to be what the legislature intended.")

The Commission finds that the plain language of W.Va. Code § 6B-2-6(a)(3) does not manifest a legislative intent to include only directors or deputy directors that are heads of agencies. The Legislature provided no limiting language to the effect that only directors who constitute the head of a particular agency must file a Financial Disclosure Statement. *See* Syl. pt. 2, *Crockett v. Andrews,* 153 W.Va. 714, 172 S.E.2d 384 (1970) ("Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.") Indeed, if only heads of agencies were required to file financial disclosures, then arguably assistant directors would not be required to file Financial Disclosure Statements despite express statutory language instructing them to do so.

The Requester additionally argues that requiring its directors and deputy directors to file financial disclosures would constitute an inequitable and inconsistent result because other division heads and assistant division heads not holding the titles of director or deputy director would not be required to file. As stated in Advisory Opinion 2014-13, W.Va. Code § 6B-2-6(a)(3) "is a clear and concise statutory requirement, which is not open to interpretation." Furthermore, the "Commission does not have the authority to excuse the Requester from the application of W.Va. Code § 6B-2-6(a)(3)." *Id.* The Legislature made a policy decision regarding the individuals who are required to file Financial Disclosure Statements, a decision in which the Ethics Commission will not interfere. **Accordingly, the Commission finds that the Requester's directors and deputy directors are required to file Financial Disclosure Statements.**

Finally, pursuant to W.Va. Code§ 68-2-G(d) the Commission grants the Requester's request for an extension for the affected individuals to file a Financial Disclosure Statement. The Commission finds that the Requester has shown good cause to extend the deadline by seeking the instant Advisory Opinion to determine whether the affected individuals are required to file. Accordingly, the Commission hereby extends the deadline for the affected individuals to file a Financial Disclosure Statement to 21 days from the date of this Opinion.

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, Chairperson
Robert J. Wolfe, Chairperson