Advisory Opinion 2017-06

Issued on March 2, 2017, by

The West Virginia Ethics Commission

Opinion Sought

A **Manager of a Legislative Office** asks whether various employees are required to file Financial Disclosure Statements.

Facts Relied Upon By the Commission

The Requester states that the Legislative Office is composed of certain members of the Senate and the House of Delegates and has supervisory authority over 12 functional units. The Requester states that each unit is headed by a person with the title of "Director." The Requester states that when including the directors, two units have a staff of three individuals and one unit consists of one employee.

The Requester additionally states that a chief administrative officer of another unit has the title of "Clerk." The Clerk exercises many of the same duties as the directors, plus additional legal research and ceremonial duties. Finally, the Requester states that there are three attorneys in this unit with the title of "Judge." These individuals are appointed by the President of the Senate and the Speaker of the House of Delegates. Requester states that the judges exercise some degree of administrative authority over this unit in that the judges appoint the clerk, chief deputy clerk and additional deputy clerks.

The Requester asks whether he, as a Manager of a Legislative Office, or the abovementioned employees are required to file Financial Disclosure Statements. The Requester additionally requests extensions to file Financial Disclosure Statements if the Ethics Commission decides that any of the abovementioned individuals are required to file.

Provisions Relied Upon By the Commission

W.Va. Code § 68-2-6 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:
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> (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).

The Requester's inquiry implicates neitherW.Va. Code§ 6B-2-6(a)(1) norW.Va. Code§ 6B-2-6(a)(2) as the Requester and the employees Requester describes are neither elected officials nor are they appointed by the governor. The Ethics Commission must thus determine whether the individuals are mandated to file Financial Disclosure Statements pursuant to W.Va. Code§ 6B-2-6(a)(3).

The Ethics Commission has addressed the application of this provision in two recent Advisory Opinions. In Advisory Opinion 2017-03, the Commission determined that a state agency's directors and deputy directors were required to file Financial Disclosure Statements based upon the plain language of W.Va. Code§ 6B-2-6(a)(3). Furthermore, in Advisory Opinion 2014-13, the Commission determined that a division director of a state agency was required to file a Financial Disclosure Statement pursuant to W.Va. Code § 6B-2-6(a)(3). The Commission stated that "[i]t is clear from a plain reading of§ 6B-2-6(a)(3) that public servants holding the title of 'director' are covered by this statutory requirement of the Act."

The Requester inquires -- in light of Advisory Opinion 2017-03 -- whether he or the abovementioned employees of the Legislative Office, which includes directors and deputy directors, are required to file Financial Disclosure Statements. The Requester's inquiry, however, is distinguishable from those made in Advisory Opinion 2017-03 and Advisory Opinion 2014-13. These Opinions dealt with whether the language in W.Va. Code§ 6B-2-6(a)(3) included directors and deputy directors in an office of the executive branch. Requester's inquiry, on the other hand, involves applying W.Va. Code§ 6B-2-6(a)(3) to a legislative office.

A survey of the Ethics Commission's previous opinions dealing with Financial Disclosure Statements reveals that the Commission has not previously found that W.Va. Code§ 6B-2-6(a)(3) covers legislative employees. See Advisory Opinions 2017-03; 2014-13; 2004-15; 93-13; 93-06; 90-55; 90-42; 90-36; 90-12; 90-01; 89-72; 89-4. Accordingly, before considering whether W.Va. Code § 6B-2-6(a)(3) applies to specific employees of Requester's Legislative Office, the Ethics Commission must first determine whether W.Va. Code§ 6B-2-6(a)(3) includes employees in the legislative branch.

The Commission will first consider the plain language of the statute. *Goffv. W Va. Office of Ins. Commissioner,* 236 W.Va. 393, 780 S.E.2d 659 (2015) ("Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.") (quoting Syl. Pt. 2, *State v. Elder,* 152 W.Va. 571, 165 S.E.2d 108 (1968)). W.Va. Code§ 6B-2-6(a)(3) provides that the following persons must file financial disclosures: "Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads." The statute is silent as to whether it applies to one or all branches of government. Accordingly, the Commission must ascertain the legislative intent as to whether W.Va. Code§ 6B-2-6(a)(3) includes legislative employees. Syl. Pt. 7, *Liberty Mut. Ins.* Co. *v. Morrisey,* 760 S.E.2d 863 (W.Va., 2014) ("[I]nterpretation of a statute is warranted only if the statute is ambiguous and the initial step in such interpretative inquiry is to ascertain the legislative intent.").

"In ascertaining legislative intent, effect must be given to each part of the statute and to the statute as a whole so as to accomplish the general purpose of the legislation." Syl. Pt. 9, *Id.* W.Va. Code§ 6B-2-6(a) defines three categories of individuals who are required to file Financial Disclosure Statements. W.Va. Code§ 6B-2-6(a)(1) includes all elected

officials including, but not limited to, those elected to statewide offices, county elected officials and municipal elected officials in municipalities which have opted to be covered by this section. W.Va. Code § 6B-2-6(a)(2) includes all members of state boards, commissions, and agencies appointed by the governor. Notably, in this subdivision the Legislature omitted individuals appointed by the legislative branch of government. Thus, the individuals Requester describes as being appointed by the President of the Senate and the Speaker of the House of Delegates would not be covered by this provision.

W.Va. Code§ 6B-2-6(a)(3) then begins by requiring "Secretaries of departments" to file Financial Disclosure Statements. The Legislature, after limiting subdivision (2) to appointees falling under the executive branch, begins the very next subdivision by listing individuals falling under the executive branch of government, i.e., the Cabinet Secretaries. *See* W.Va. Code§ 5F-1-4(a)(5) (defining "Secretary" as the administrative head of one of the nine departments created in W.Va. Code§ 5F-2-1).[1] This subdivision subsequently lists commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

"It is a fundamental rule of construction that, in accordance with the maxim *noscitur* a *sociis,* the meaning of a word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated. Language, although apparently general, may be limited in its operation or effect where it may be gathered from the intent and purpose of the statute that it was designed to apply only to certain persons or things, or was to operate only under certain conditions." Syl. Pt. 1, *Darlington v. Mangum,* 192 W.Va. 112, 450 S.E.2d 809 (W.Va., 1994) (internal quotation omitted). The Commission cannot ignore the fact that the Legislature began subdivision (3) by listing Cabinet Secretaries, a specific group of individuals falling under the executive branch of government. Applying the maxim *noscitur* a *sociis,* the Commission finds that the titles following "Secretaries of departments" in subdivision (3) are similarly limited to those individuals falling under the executive branch of government.

The Commission additionally notes that the language used in W.Va. Code§ 6B-2-6(a)(3) can be found in one other place in the West Virginia Code. W.Va. Code§ 5A-3-60(a) provides: "All executive department *secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department*

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[1] See, *e.g.,* Jason Pizatella, *Separation of Powers and the Governor's Office In West Virginia: Advocating* a *More Deferential Approach To the Chief Executive From the Judiciary,* 109 W.Va. L. Rev. 185, 207-208 (2006)

> West Virginia adopted a sweeping executive branch reform initiative in 1989 that expanded the Governor's control over state agencies. Instead of dealing directly with more than 100 departments and countless boards and commissions, the Governor now leads a reorganized executive branch with department heads that possess the title of "Secretary," similar to the President's Cabinet. These agencies include the Departments of Administration, Commerce, Education and the Arts, Environmental Protection, Health and Human Resources, Military Affairs and Public Safety, Revenue, and Transportation. The department heads comprise the Governor's Cabinet and report directly to him.

heads, deputy department heads and assistant department heads are hereby required to take two hours of training on purchasing procedures and purchasing cards annually." *(emphasis added).* When describing this similar list of individuals, the Legislature expressly labeled the individuals as falling under the executive department.[2]

Given the foregoing, the Commission finds that the positions listed in W.Va. Code § 6B-2-6(a)(3) describe positions falling under the executive branch of state government. The Commission finds that this construction of the statute is consistent with legislative intent and gives proper effect to the statute as a whole so as to accomplish the general purpose of the legislation. Accordingly, neither the Requester nor the employees described above are required to file Financial Disclosure Statements.

The Commission's decision in the instant Advisory Opinion is at odds with its decision in Advisory Opinion 90-36. Advisory Opinion 90-36 summarily held in three sentences that certain judicial branch administrative employees were required to file Financial Disclosure Statements. The Opinion failed to provide an adequate analysis of W.Va. Code§ 68-2-6(a)(3) as it applied to the facts therein. Accordingly, the Ethics Commission hereby expressly overrules Advisory Opinion 90-36.

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
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[2] The Ethics Commission has no authority to interpret W.Va. Code§ 5A-3-60(a). The Commission has noted the language used in W.Va. Code§ 5A-3-60(a) for the sole purpose of interpreting W.Va. Code§ 6B-2-6(a)(3).