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Ethics News

For WV Counties and Cities

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But Why Won't the Commission Investigate…?!?

It is common for the Ethics Commission to get complaints about conduct - or against people - the Commission is not authorized to investigate. As the Commission explained in Advisory Opinion 2013-02, "The Ethics Act is not a general code of conduct which prohibits public servants and public officials from engaging in any and all conduct which could be viewed as unethical. Instead, it establishes certain standards of conduct for public servants and public officials to follow to avoid a specific conflict of interest between their personal interests and the public good." Our Ethics Act Brochure explains the specific conduct covered by the Act.

Let us explain why the Commission can't investigate the following types of complaints:

Police Misconduct:

The Ethics Act prohibits public officials and employees, including law enforcement officers, from using their public jobs for their private gain or the private gain of another person. Complaints about rude or unprofessional conduct, however, should be made to the law enforcement agency's Professional Standards Unit, or a high-ranking officer in the department. Complaints about civil rights violations are handled in the state and federal courts. Private attorneys would be helpful in these matters. The West Virginia State Bar may help find a qualified attorney. WV State Bar Lawyer Referral

Campaigning for Public Office:

The Ethics Act does not apply to candidates running for public office. It applies to people currently holding public office and public employees. Complaints about the conduct of candidates for public office may be made to the Secretary of State's Office, Elections Division. Elections/Campaigning Complaint

Private Legal Representation:

The Ethics Commission does not investigate complaints against private attorneys for bad legal representation or rude and unprofessional conduct. The Commission investigates certain conduct of public employees or officials in their public offices, not the conduct of attorneys providing private legal services. Even though court-appointed attorneys are paid by the State, they are private attorneys and not subject to the Ethics Act. Complaints against private attorneys may be made to the Office of Disciplinary Council, the state agency that enforces the lawyers' codes of conduct. WV Office of Disciplinary Counsel

Judges' Rulings and Conduct:

The Commission does not investigate complaints about the "correctness" of a judge's ruling. These matters are handled through the courts' appellate systems, nor does the Commission enforce the Code of Judicial Conduct. Complaints about rude or unprofessional conduct by judges may be made to the Judicial Investigation Commission. WV Judicial Investigation Commission

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Quorums

What is a quorum? A quorum is a gathering of a majority of sitting members of a board, committee, or other governing body, unless applicable law provides otherwise. Vacant seats are disregarded in the quorum calculation. OMAO 2011-07. For example, if a board of nine members has two vacancies, four members make a quorum.

Are some governing bodies allowed to have a quorum that is less than a majority of its members? Yes. The applicable law creating the body may set the quorum or may allow the board or committee to set the quorum at more or less than a majority. OMAO 2005-05.

If a quorum is not present, what action may be taken at a meeting? No official business may be conducted without a quorum other than to try to establish a quorum or to adjourn. OMAO 2000-09.

If a quorum is established at the beginning of the meeting, may it be lost later in the meeting? If enough members leave a meeting, the quorum will be lost, and no further official business may be conducted.

What if the recusal of a member would result in a loss of quorum? The Ethics Act requires public officials under certain circumstances to recuse themselves, which includes removing oneself from the meeting room. W. Va. Code § 6B-2-5(j). However, the Ethics Commission has ruled that a recused member may remain in the room long enough to maintain a quorum. A.O. 2000-37.

May a quorum of a body communicate outside of a public meeting? Yes, if they avoid discussing matters requiring official action. For example, a quorum of a county commission may have discussions outside of a public meeting to determine whether a meeting should be rescheduled but may not discuss whether to hire a new county administrator. OMAO 2003-01. For more examples of gatherings and communications which are permissible, click here.

Investigate

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Employee Wages, Hours, Benefits:

The Ethics Commission does not investigate complaints regarding the wages, hours, or benefits of businesses, consumers, employees, and residents of West Virginia. For information, contact the West Virginia Division of Labor. WV Division of Labor

Open Meetings Violations:

The Commission is charged with interpreting the Open Meetings Act but not enforcing it. This, understandably, is confusing. Alleged violations should be filed, within 120 days, in the circuit court in the county where the conduct occurred.

Private businesses and Nonprofits:

The Ethics Commission does not investigate the conduct of owners or employees of private businesses or non-profit organizations because they are not public officials or employees. Complaints about consumers' practices may be made to the Consumer Protection Division of the Attorney General's Office. WV Consumer Protection Private attorneys may be helpful in these matters. The West Virginia State Bar may help find a qualified attorney. WV State Bar Lawyer Referral

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