

West Virginia Ethics Commission

2018 Annual Report



West Virginia Ethics Commission
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Duties of the Ethics Commission

The Ethics Commission interprets and enforces the West Virginia Governmental Ethics Act. The purpose of the Act is to preserve the public's confidence in the integrity and impartiality of governmental actions. The Commission also interprets the Open Governmental Meetings Act (W. Va. Code § 6-9A-1 through 6-9A-12); W. Va. Code § 61-10-15, a criminal misdemeanor statute, and W. Va. Code §18-5-1a(a) and (b) relating to eligibility to serve on a county school board.

The Commission enforces the Ethics Act's prohibitions through the Verified Complaint and Initiated Complaint processes; administers lobbyist registration and reporting provisions; publishes an annual Lobbyist Directory; renders formal Advisory Opinions on the meaning and application of the Ethics Act and the Open Governmental Meetings Act; issues formal Advisory Opinions to county school board members and candidates for those boards regarding other elected or appointed positions potentially barring their service; administers the Code of Conduct for State Administrative Law Judges; processes Financial Disclosure Statements, and advises and educates public employees and officials and members of the public regarding the Ethics Act and the Open Governmental Meetings Act. The Commission also grants exemptions from the employment and contract prohibitions in the Ethics Act.

All Complaints are considered by the three-member Probable Cause Review Board, which is an autonomous board not under the direction or control of the Ethics Commission. The Review Board reviews Complaints filed with or initiated by the Ethics Commission to make a threshold determination of whether probable cause exists to believe that a violation of the Ethics Act has occurred.

Commission Members

The members of the West Virginia Ethics Commission are appointed by the Governor with the advice and consent of the Senate. W. Va. Code § 6B-2-1(a). Members serving in 2018 are:

Robert J. Wolfe, Chairperson
Man, WV

Lindsey Ashley¹
Pineville, WV

Lynn Davis
Wellsburg, WV

Karen Disibbio
Bluefield, WV

Robert Harman
Keyser, WV

Betty Ireland²
Charleston, WV

Suzan Singleton
Moundsville, WV

Larry Tweel
Huntington, WV

Terry Walker
Kearneysville, WV

Monté Williams
Morgantown, WV

¹ Appointed December 12, 2018.

² Term ended December 12, 2018.

Probable Cause Review Board Members

The members of the Probable Cause Review Board are appointed by the Governor with the advice and consent of the Senate. Members in 2018, are:

James E. Shepherd, II, Chairperson
Huntington, WV

Daniel J. Guida
Weirton, WV

Michael A. Kawash
Charleston, WV

Staff

The staff of the Ethics Commission consists of the Executive Director, two full-time attorneys, two part-time attorneys and two full-time administrative assistants.

Rebecca L. Stepto
Executive Director

Derek A. Knopp
Staff Attorney

Kimberly B. Weber
General Counsel

Teri Anderson
Lobbyist Registrar

Andrew R. Herrick
Staff Attorney

M. Ellen Briggs
Executive Assistant

Theresa M. Kirk
Staff Attorney

Budget

The Ethics Commission was allocated the following amounts from the General Revenue Fund for the following fiscal years:

| | |
|-----------|---------------|
| 2018-2019 | \$ 701,706.00 |
| 2017-2018 | \$ 687,840.00 |
| 2016-2017 | \$ 691,813.00 |
| 2015-2016 | \$ 706,575.00 |
| 2014-2015 | \$ 720,725.26 |

Informal advice

Public servants may seek informal advice from the Ethics Commission staff by contacting the Commission or by sending an email to ethics@wv.gov. If staff is unable to answer a question based upon the language in the statute at issue (the Ethics Act, the Open Meetings Act or other statutes which the Commission has jurisdiction to interpret), a Commission Guideline or an Advisory Opinion, a new Advisory Opinion may be requested.

Following is a summary of the number of requests for informal written advice received by the Commission during the past five years:

| Fiscal year | Written informal advice |
|--------------------|--------------------------------|
| 2017-2018 | 411 |
| 2016-2017 | 475 |
| 2015-2016 | 512 |
| 2014-2015 | 448 |
| 2013-2014 | 542 |

Formal Opinions/Exemptions

The Ethics Commission issues formal Advisory Opinions which respond to questions relating to the application of the Ethics Act. It also issues Opinions regarding W. Va. Code § 61-10-15 (relating to county employees' interests in contracts) and regarding W. Va. Code § 18-5-1a (to county board of education members, members-elect and candidates for election to board regarding whether they may hold certain other positions and serve on a county board).

In addition, two of the Commission's Committees are authorized to issue Advisory Opinions. The Committee on Open Governmental Meetings issues Advisory Opinions which interpret the Open Governmental Meetings Act. The Committee on Standards of Conduct for State Administrative Law Judges issues Advisory Opinions regarding the Code of Conduct for Administrative Law Judges.

Following are five-year calendar year totals of formal Opinions issued regarding the Ethics Act, the Open Governmental Meetings Act, the ALJ Code of Conduct and county school board eligibility as well as formal Contract and Employment Exemptions granted or denied by the Commission.

| Subject Matter | 2014 | 2015 | 2016 | 2017 | 2018 |
|-----------------------|-------------|-------------|-------------|-------------|-------------|
| Ethics | 29 | 24 | 15 | 21 | 9 |
| Open Meetings | 6 | 3 | 3 | 2 | 2 |
| ALJ Code of Conduct | 0 | 0 | 0 | 0 | 0 |
| Contract Exemptions | 4 | 3 | 5 | 7 | 6 |
| Employment Exemptions | 22 | 18 | 48 | 34 | 69 |
| Property Exemptions | 0 | 0 | 0 | 1 | 1 |
| School Board | 4 | 0 | 0 | 1 | 0 |
| TOTAL: | 65 | 48 | 71 | 66 | 87 |

Ethics Act Advisory Opinions

Advisory Opinion 2018-01 – A County Commission

Category: Gifts acceptance and solicitation

The sale of sponsorships for park benches is not a gift solicitation but a fund-raising activity based upon an exchange of value either commercial or personal. Potential sponsors may not be coerced into buying a sponsorship and may not receive unlawful or political favoritism in return for purchasing a sponsorship.

Advisory Opinion 2018-02 – A County Commission

Category: Private Gain

The Ethics Commission was unable to determine whether there is implied (or express) authority for a county commission to use public funds to buy lunches for county elected officials and their staffs for an annual working lunch meeting. If the Office of the Attorney General or Auditor's Office opines that there is express or implied authority for the expenditure, then the expenditure of public funds for this purpose would not violate the Ethics Act.

Advisory Opinion 2018-03 – A State Agency Manager

Category: Private Gain

A public employee may seek reimbursement for overnight lodging while on official business by following the restrictions imposed by an agency's applicable State Travel Rules.

Advisory Opinion 2018-04 – A State Agency Manager

Category: Private Gain

Public agencies should review applicable laws to determine whether there is express or implied authority for purchasing meals for their officials or employees. When a meal is authorized, reimbursement at a rate established by the West Virginia Travel Rules does not violate the Ethics Act.

Advisory Opinion 2018-05 – A Board of Education Member

Category: Prohibited Contract

A Board of Education member would not have sufficient voice, influence or control over her employment contract with WVU Extension Service to prohibit her from serving as a BOE member, given the BOE's limited appropriations to WVU Extension Services and the Requester's lack of power to make appointments to her local extension service committee

Advisory Opinion 2018-06 – A Fire Chief

Category: Employment

A Deputy Fire Marshal may lease and operate a private club that is subject to the City's fire code as long as neither he nor a subordinate inspects or investigates matters concerning the club.

Advisory Opinion 2018-07 – A County Commission

Category: Prohibited Contract

A County Commission may allow the Sheriff to live rent-free in a house located in the county park because the Sheriff's presence would enhance security at the park and he would repair and maintain the house.

Advisory Opinion 2018-08 – withdrawn

Advisory Opinion 2018-09 – A City Council Member

Category: Prohibited Contract; Voting

For a public official or public employee to have an interest in the benefits of a public contract pursuant to W. Va. Code § 6B-2-5(d), he or she must have a definite and direct interest in the benefits of the contract. Since the benefit to the City Council Member is not selective, differential or in disproportion to the benefit provided to the other 28 property owners, the Council Member does not have a definite and direct interest in the public

contract. The City's purchase of the Property therefore would not be prohibited, and the Council Member may deliberate and vote on whether the City purchases the Property.

Advisory Opinion 2018-10 – A Board of Education Member

Category: Prohibited Contract

Under W. Va. Code § 61-10-15, a Board of Education Member may continue to be employed on a per diem basis by a staffing agency to perform work for a textbook company that markets textbooks and educational materials to the Requester's Board of Education because the Member meets the exemption provided to public officials who are employees of a vendor or supplier to their agency. Under W. Va. Code § 6B-2-5(d), the Board of Education Member is not considered to be associated with either the staffing agency or textbook company because the Member does not serve as a director, officer or holder of stock.

Open Meetings Act Advisory Opinions

The Commission's Committee on Open Governmental Meetings issues written Advisory Opinions to governing bodies, or to its members, on whether an action or a proposed action violates the Open Meetings Act. The Commission issued two Open Meetings Act Advisory Opinion in 2018:

OMAO 2018-01 – President of the Wetzel County Commission

A quorum of the County Commission may attend private meetings so long as the Commissioners do not engage in discussions that involves deliberating toward a decision on a matter requiring official action in the future. If a matter raised in the meetings will require official action by the County Commission, the Commissioners are only permitted to discuss purely logistical issues regarding that matter, such as whether the matter should be included on a future agenda and when to schedule a meeting.

OMAO 2018-02 – West Virginia Workers' Compensation Industrial Council

The Workers' Compensation Industrial Council may conduct portions of its public meetings in executive session to discuss items that pertain to other employees under W. Va. Code § 6-9A-4(b)(12) when the employee being considered for potential discharge has requested an open meeting to protect the privacy rights of the other employees. The Council must attempt to segregate the portions that must be held in public from the portions that are permitted to be held in executive session. If segregation of exempt and nonexempt portions would make a coherent discussion impossible, then it would be appropriate to hold the entire meeting in executive session.

Contract Exemptions

The Ethics Act prohibits elected public officials and full-time public employees from having a financial interest in certain contracts, purchases or sales over which their public position gives them control. The Commission has authority to grant a governmental entity an exemption from the Act's contract provisions.

The Commission granted or denied Contract Exemptions during 2018 in the following matters:

CE 2018-01 – Mineral County Ambulance Authority

The Ethics Commission granted an exemption to the Mineral County Ambulance Authority to contract for chase car services with Valley Regional Enterprises, Inc., a/k/a Valley Medical Transport who employs four of Ambulance Authority members. The member may not be involved in any vote or deliberations by the Ambulance Authority regarding the chase car contract or any other contracts with Valley Regional Enterprises, Inc., a/k/a Valley Medical Transport.

CE 2018-02 – West Virginia Tourism Office

The Ethics Commission granted the West Virginia Tourism Office a Contract Exemption to allow it to include The Greenbrier in West Virginia's Cooperative Advertising Program.

CE 2018-03 – Kanawha County Commission

The Ethics Commission granted an exemption to the Kanawha County Commission to continue purchasing publication services and daily newspaper subscriptions from Charleston Newspapers in which Commissioner Ben Salango has an ownership interest of less than five percent. Commissioner Salango must however recuse himself from decisions and votes relating to the County's contracts with Charleston Newspapers.

CE 2018-04 – Wyoming County Health Department

The Ethics Commission granted an exemption to the Wyoming County Health Department to continue contracting with Family Healthcare Associates Inc. for medical services for its women's health program for a period not to exceed six months. The Health Department requested the exemption due to the ownership interest of its Health Officer in Family Healthcare Inc. and because the Board's Chairperson resides with a part-owner of the business. The Health Officer and the Board's Chairperson must recuse themselves from decisions and votes relating to their respective businesses.

CE 2018-05 – Withdrawn

CE 2018-06 – Clay County Commission

The Ethics Commission granted an exemption, with limitations, to the Clay County Commission to continue contracting with King's Wrecker Service for wrecker services in the Clay area. The total amount for services received from King's may not exceed \$2,000 for a period of one year beginning on October 4, 2018. King's may only be used when it is the closest wrecker service available, and the Commissioner who is the owner of King's may not be involved in any decisions related to King's.

CE 2018-07 – Town of Danville

The Ethics Commission granted an exemption to the Town of Danville to contract with Byrnside Hardware and Barker Hardware for purchases not to exceed \$4,000 from both stores from November 1, 2018, to November 1, 2019. The value of any one item purchased may not exceed \$300, and items may be purchased from the two stores only when no other Danville business has the item. The Council Member and Recorder who have ownership interests in the stores may not be involved in any Town decisions related to their businesses and may not attempt to influence Town employees or officials to make purchases from their businesses.

Property Exemption

A full-time public official or full-time public employee who would be adversely affected by the Ethics Act's prohibitions against purchasing, selling or leasing real or personal property to certain persons or entities may apply to the Ethics Commission for an exemption from the prohibition. The Commission issued one Property Exemption in 2018.

PE 2018-01 – Wood County Assessor David Nohe

The Ethics Commission authorized Requester Nohe to sell four pieces of real estate which he owns in Wood County. The Commission held that the Requester must remove himself from matters uniquely affecting a potential buyer, may not be involved in any matters affecting the buyer or the property for a six-month period following the close of the transaction, and must provide written notification of the sale, including the residence of the buyer, to the Executive Director of the Ethics Commission.

Employment Exemptions granted

The Ethics Act prohibits full-time public servants from seeking or accepting employment from persons or businesses that they or their subordinates regulate, or from seeking or accepting employment from vendors if the public servant, or his or her subordinates, exercise authority or control over a public contract with that vendor.

Public servants may request an exemption from the Ethics Commission to seek employment with vendors or regulated persons with whom they or a subordinate exercise control at present or in the prior 12 months.

The following Employment Exemptions were granted during 2018:

- EE 2018-01** Patrick C. Park II, QA/QC Inspection Manager, Maintenance Division, Division of Highways, Department of Transportation
- EE 2018-02** Justin Parr, Financial Analyst, Offices of the Insurance Commissioner
- EE 2018-03** Rita E. Richard, Chief Investigator, Medicaid Fraud Control Unit, Office of Inspector General, Department of Health and Human Services
- EE 2018-04** Trina Crowder, Director, Medicaid Fraud Control Unit, Office of Inspector General, Department of Health and Human Resources
- EE 2018-05** Edwin Clarkson, Technical Analyst, Public Service Commission
- EE 2018-06** Andrew R. Pauley, Deputy Commissioner and General Counsel, Office of the Insurance Commissioner
- EE 2018-07** Ghassan H. Suward, P.E., District Engineer, Division of Highways, Department of Transportation
- EE 2018-08** Kristin A. Boggs, General Counsel, Acting Chief, Office of Legal Services, Department of Environmental Protection
- EE 2018-09** Joshua L. Jarrell, Deputy Secretary/General Counsel, Department of Commerce
- EE 2018-10** Kristopher N. Hopkins, Executive Director, Department of Commerce, Development Office
- EE 2018-11** Mary Catherine Tuckwiller, Attorney, Board of Education
- EE 2018-12** Robert D. Moore, Realty Manager, Chief of Acquisition, Division of Highways, Department of Transportation
- EE 2018-13** Charles Crawford, Transportation Engineering Technician-Senior, Division of Highways, Department of Transportation
- EE 2018-14** Rick J. Eldridge, Appraiser Manager, Right of Way Division, Division of Highways, Department of Transportation
- EE 2018-15** Gary T. Wilson, Right of Way Manager, Division of Highways, Department of Transportation
- EE 2018-16** Marshall S. Lloyd, Transportation Realty Manager, Division of Highways, Department of Transportation
- EE 2018-17** John Fitzsimmons, Realty Manager, Division of Highways, Department of Transportation
- EE 2018-18** William H. Varney, Jr., Asset Management Engineer, Division of Highways, Department of Transportation
- EE 2018-19** Christopher M. Miller, Realty Manager, Chief of Relocation and Property, Division of Highways, Department of Transportation
- EE 2018-20** Jack Wroten, Realty Agent III, Division of Highways, Department of Transportation
- EE 2018-21** Chad J. Toney, In-House Design Section Head, Division of Highways, Department of Transportation

- EE 2018-22** Robert Queen, Assistant Secretary of Transportation, Assistant Commissioner of Highways, Acting Director Aeronautics Commission, Department of Transportation
- EE 2018-23** Jaime L. Arbogast, Transportation Realty Agent III, Division of Highways, Department of Transportation
- EE 2018-24** Eugene White, Deputy Director, Office of Miners' Health, Safety, and Training
- EE 2018-25** Anne Amick Williams, Deputy Commissioner, Bureau for Public Health
- EE 2018-26** Withdrawn
- EE 2018-27** Joseph Jusazczak, District 6 Construction Engineer, Division of Highways, Department of Transportation
- EE 2018-28** Kyle B. Hall, Regional Construction Engineer, Division of Highways, Department of Transportation
- EE 2018-29** Paul F. Hicks, District 6, Assistant Traffic Engineer, Division of Highways, Department of Transportation
- EE 2018-30** Douglas L. Clark, Contract Management Coordinator, Division of Highways, Department of Transportation
- EE 2018-31** Ryan J. Sengewalt, Highway Engineer Trainee, Division of Highways, Department of Transportation
- EE 2018-32** Patrick J. Gurrera, Bridge Engineer, Division of Highways, Department of Transportation
- EE 2018-33** William Richard Staton, Director, Division of Justice and Community Services
- EE 2018-34** Patrick Brennan, Highway Engineer Associate, Division of Highways, Department of Transportation
- EE 2018-35** Charles Henry, Maintenance Assistant to the District Maintenance Engineer, Division of Highways, Department of Transportation
- EE 2018-36** Melanie L. Lopez, Information Systems Manager 3, Office of Technology
- EE 2018-37** James T. Collins, Assistant District Engineer (Maintenance Engineer), Division of Highways, Department of Transportation
- EE 2018-38** Benjamin B. Rossi, Environmental Specialist, Division of Highways, Department of Transportation
- EE 2018-39** Donald L. Williams, District 4 Engineer/Manager, Division of Highways, Department of Transportation
- EE 2018-40** Mary L. (Cindy) Cross, Environmental Inspector Specialist, Department of Environmental Protection
- EE 2018-41** Travis B. Walbeck, State Pavement Engineer, Division of Highways, Department of Transportation
- EE 2018-42** Chris LeRose, Signing, Lighting and Tech Standard Engineer, Division of Highways, Department of Transportation
- EE 2018-43** Danielle Boyd, Managing General Counsel, Lottery Commission
- EE 2018-44** J. Darby Clayton, Regional Construction Engineer, Division of Highways, Department of Transportation
- EE 2018-45** Stephen T. Rumbaugh, PE, Deputy State Highway Engineer, Division of Highways, Department of Transportation

- EE 2018-46** Jimmy Wriston, Chief Transportation Engineer/Special Programs Manager, Division of Highways, Department of Transportation
- EE 2018-47** Terry Burns, Quality Assurance Training Program Administrator, Division of Highways, Department of Transportation
- EE 2018-48** Donna J. Hardy, PE, Mobility and Safety Engineer, Division of Highways, Department of Transportation
- EE 2018-49** Brandi G. Krofcheck, Intelligent Transportation System (ITS) and Lighting Engineer, Division of Highways, Department of Transportation
- EE 2018-50** Bruce F. Miller, Transportation Engineering Technician Senior, Division of Highways, Department of Transportation
- EE 2018-51** Kimberly D. Hoover, Chemist I, Division of Highways, Department of Transportation
- EE 2018-52** Eric B. Hudnall, Director, Right of Way Division, Division of Highways, Department of Transportation
- EE 2018-53** Truman Sayre, Jr., Chief Administrative Law Judge, WorkForce WV, Unemployment Compensation Board of Review
- EE 2018-54** Andrew Wise, Highway Engineer Associate, Division of Highways, Department of Transportation
- EE 2018-55** Denzil R. Miller, Transportation Engineering Technician, Division of Highways, Department of Transportation
- EE 2018-56** Gary Wayne Graley, Highway Engineer, Division of Highways, Department of Transportation
- EE 2018-57** Christopher J. Francis, Highway Engineer Associate, Division of Highways, Department of Transportation
- EE 2018-58** Jeffrey L. Bush, Office Director, Department of Health and Human Resources, Office of Accountability and Management Reporting
- EE 2018-59** David Millhouse, Transportation Crew Supervisor 2, Division of Highways, Department of Transportation
- EE 2018-60** David Burris, Assistant District Engineer, Maintenance, Division of Highways, Department of Transportation
- EE 2018-61** Anthony E. Clark, Maintenance Engineer, Division of Highways, Department of Transportation
- EE 2018-62** Jason M. Boyd, P.E., Director, Contract Administration Division, Division of Highways, Department of Transportation
- EE 2018-63** Ron Stanevich, Director, Materials Control, Soils & Testing Division, Division of Highways, Department of Transportation
- EE 2018-64** John E. Taylor, Assistant Director, Contract Administration, Division of Highways, Department of Transportation
- EE 2018-65** John P. Toomey, Contract Process Manager, Division of Highways, Department of Transportation
- EE 2018-66** Delmas M. Crum, P.E., Consultant Services Manager/Field Coordinator, Division of Highways, Department of Transportation
- EE 2018-67** Jonathan T. Storage, General Counsel, Division of Highways, Department of Transportation
- EE 2018-68** Hao Chen, Contract Analytics Coordinator, Division of Highways, Department of Transportation

EE 2018-69 Michael A. Dodd, Contract Management Coordinator, Division of Highways, Department of Transportation

EE 2018-70 David Scott Abbott, Integrated Construction Technologies Supervisor, Division of Highways, Department of Transportation

Enforcement

The Ethics Commission enforces the West Virginia Ethics Act through an administrative Complaint process. Anyone may file a Complaint, and the Commission itself may initiate Complaints against a person subject to the Ethics Act.

All Complaints are considered by the three-member Probable Cause Review Board, which initially determines whether the allegations in the Complaint, if taken as true, state a material violation of the Ethics Act. Complaints which do state a material violation of the Act are investigated, and those that do not are dismissed.

Complaints which allege trivial or inconsequential violations or were filed outside of the statute of limitations are dismissed.

Public hearings are held in matters in which probable cause to believe that a violation of the Act has occurred. However, persons against whom Complaints are filed may enter into a settlement of the allegations through a Conciliation Agreement with the Commission.

Persons found to have violated the Ethics Act may be publicly reprimanded, fined up to \$5,000 per violation, ordered to pay restitution and/or ordered to reimburse the Commission for its costs of investigation and prosecution. The Commission also may recommend that the person be removed from office or that his or her employment be terminated.

Complaints

| Calendar year | Total Complaints filed | Initiated by Commission (of total filed) | Dismissed without investigation | Investigated | Dismissed after investigation | Resolved via Conciliation Agreement |
|---------------|------------------------|--|---------------------------------|--------------|-------------------------------|-------------------------------------|
| 2018 | 76 | 4 | 32 | 45 | 37 | 8 |
| 2017 | 85 | 5 | 61 | 30 | 24 | 4 |
| 2016 | 108 | 0 | 58 | 49 | 54 | 7 |
| 2015 | 153 | 0 | 100 | 49 | 59 | 17 |
| 2014 | 143 | 14 | 68 | 68 | 64 | 7 |

*Note that Complaints may not have been resolved in the year in which they were filed.

Public Hearing Results in 2018

CIC 2017-02: Cheryle Hall, Former Clerk, Court of Claims, Respondent.

On February 1, 2018, the Commission found that the evidence at the public hearing established beyond a reasonable doubt that Cheryle M. Hall had materially violated the “use of public office for private gain” provision of the Ethics Act. The Commission concluded that she had knowingly and intentionally permitted her subordinate to be paid for 32 days that she did not work or take leave for between December 16, 2014, and June 30, 2016. Hall had allowed the employee to be overpaid by \$3,520 for hours she did not work.

The Ethics Commission ordered the following sanctions against Hall: a public reprimand; a fine of \$1,500, and reimbursement to the Commission in the amount of \$4,668 for the actual costs of prosecuting her violation.

Conciliation Agreements Approved in 2018

VCRB 2016-108: Tammy Porter, Former Member, West Union Town Council

The Town included Council Member Porter’s former business on a list of delinquent water and sewer account holders and indicated that her business owed \$461.49.

Porter disputed the amount of money owed by her former business and maintained that her business was erroneously charged for water and sewer for months after it had closed.

The Town Council unanimously voted in one motion to write off uncollectable water or sewer accounts totaling \$7,705.60, including Porter’s former business account. Porter voted in favor of the motion. W. Va. Code § 6B-2-5(j) prohibits public officials from voting on matters financially affecting a business they own.

Porter agreed that she had violated the Ethics Act. She agreed to receive a public reprimand; to pay a fine of \$250, and to complete training on the Ethics Act. The Commission approved the Agreement on February 1, 2018.

VCRB 2017-005: Michelle Malone, Manager, River Road Public Service District

Malone was the Manager of the River Road Public Service District (“PSD”) and the Paw Paw Route 19 PSD. Malone’s husband was employed by the River Road PSD and was responsible for the operation and maintenance of the PSD’s water system. He was referred to as the River Road PSD’s “Systems Manager” but had no formal job title. Malone’s daughter was employed by both PSDs; her job title was Office Assistant.

Malone agreed that the employment of her relatives by both PSDs did not comply with the nepotism restrictions in the Ethics Act and related Legislative Rule due to her

involvement in their supervision and matters affecting the terms and conditions of their employment.

Malone agreed to receive a public reprimand; to pay a fine of \$1,000; to complete training on the Ethics Act, and to comply with the terms of a Cease and Desist Order, including having the River Road PSD to be responsible for all salary requests, reimbursement requests and job title classifications for her husband and daughter. The Ethics Commission approved the Agreement on July 12, 2018.

VCRB 2017-049: Robert G. Beavers, Mayor of War

The War City Council hired Mayor Beavers' daughter to fill a vacant City Clerk position. Mayor Beavers was present for the vote on whether to hire his daughter but did not cast a vote or take part in the discussions or deliberations.

Beavers agreed that he had violated the Ethics Act's voting recusal requirements in W. Va. Code § 6B-2-5(j)(3) and W. Va. Code R. 158-6-3.6 (2017) by being present for City Council's vote to hire his daughter.

He agreed to pay a fine of \$100 and to complete training on the Ethics Act. The Ethics Commission approved the Agreement on March 1, 2018.

VCRB 2017-029: Arthur E. Kirkendoll, Former State Senator

Former Senator Kirkendoll provided false information to the Ethics Commission in Financial Disclosure Statements filed in 2014, 2015 and 2016. He represented that neither he nor his businesses had any contracts for the sale of any goods or services to any state, county, municipal or other local governmental agencies.

Kirkendoll admitted in a Conciliation Agreement that he was the sole owner of a consulting business, K & K Consulting, which had a contract to provide services to the Logan County Commission. Although Kirkendoll reported income from this business on the Disclosures for the relevant years, he failed to indicate that the contracts were related to a government entity.

Kirkendoll admitted that he had violated the Ethics Act by providing false information on the Financial Disclosure Statements. He agreed to pay a fine of \$500 and to receive a public reprimand. The Ethics Commission approved the Agreement on April 5, 2018.

VCRB 2017-013: Joseph R. Thorpe, Former Mayor, Town of West Union

Joseph Thorpe's son worked in the Town's water department prior to and during the time Thorpe served as Mayor. During this time, the son requested a raise based upon his obtaining an operator-in-training certificate. On September 12, 2016, the West Union Town Council considered whether to grant this raise. Mayor Thorpe participated in these

deliberations by answering direct questions from Council regarding why the operator-in-training certificate warrants a raise to any employee.

On October 26, 2016, Town Council considered another personnel matter regarding Thorpe's son. The Respondent's son became angry during the meeting, stated that he quit and left the meeting. Thorpe subsequently participated in a conversation with Council and said that his son was young, hot-headed and just needed time to cool off. Thorpe's son subsequently asked Council to be permitted to return to work. On December 12, 2016, Council approved the son's continued employment or rehiring. While Joseph Thorpe did not participate in the deliberations and voting, he did not properly recuse himself by physically leaving the room.

Former Mayor Thorpe admitted that he had violated the Ethics Act. He agreed to pay a fine of \$250; a public reprimand, and training on the Ethics Act. The Ethics Commission approved the Conciliation Agreement on April 5, 2018.

CIC 2017-05: Marcella Charles-Casto, Assistant Principal, Mingo Central Comprehensive High School

Marcella Charles-Casto purchased table cloths and chair covers, bands and sash slips in March 2016 with the Mingo County Board of Education's BB&T Purchasing Card. She used 194 of those items at her May 21, 2016, wedding in Tennessee. All but 10 of those items had never been used at the school and therefore were new when used at her wedding. After using the items at her wedding, she returned them to Mingo Central Comprehensive High School at some point in time. Charles-Casto agreed that she had violated the private gain provision of the Ethics Act and an associated Legislative Rule by using her position as Assistant Principal for her own private gain.

Charles-Casto agreed to pay a fine of \$2,000 in increments of \$250; a public reprimand, and training on the Ethics Act. The Ethics Commission approved the Conciliation Agreement on September 6, 2018.

Pre-Complaint Conciliation Agreement: Dustin W. Zickefoose, Upshur County Assessor

Assessor Zickefoose agreed that he had violated the Ethics Act by serving as the real estate agent for four real estate transactions in Upshur County in violation of W. Va. Code § 6B-2-5(h), which prohibits a public official from selling property to or from any person who had a matter on which he or she took regulatory action within the preceding 12 months.

The Ethics Commission had previously ruled in Advisory Opinion 2011-14 that a county assessor takes regulatory action on all property owners in the county each year when tax assessments are made and therefore may not continue a real estate business in the county.

Zickefoose agreed to pay a fine of \$1,500; to receive a public reprimand, and to undergo training on the Ethics Act. He also agreed to cease and desist from engaging in the business of buying and selling real estate in Upshur County, either personally or as an agent for others, while he serves as the elected Assessor; and, effective September 1, 2018, to cease and desist working for the Upshur Agency Inc. as an independent contractor or in any other capacity unless and until he receives an Advisory Opinion or Employment Exemption from the Ethics Commission stating that as the elected Assessor, he may be employed as an independent contract appraiser by a business located in the county in which he serves as Assessor when the appraisal work is only for out-of-county properties and businesses.

The Ethics Commission approved the Conciliation Agreement on July 12, 2018.

Pre-Complaint Conciliation Agreement: F. Colt Sandoro, Executive Director, Regional Intergovernmental Council

The Ethics Commission approved a Conciliation Agreement on October 4, 2018, with F. Colt Sandoro, Executive Director of the Regional Intergovernmental Council, a public agency. The Director had authorized the use of public funds (1) to purchase a \$37.31 sympathy arrangement due to a death in a subordinate's family; (2) an employee morale event at a restaurant, and (3) a staff lunch at a sports bar. The latter two events cost \$540. The Ethics Commission's Public Employee Recognition Events Guideline allows agencies to use public funds for employee recognition events if the agency expends no more than \$25 per employee per fiscal year. The Director admitted that he violated the Ethics Act and the Guideline. He agreed to reimburse the agency \$315, which is the difference between the amount of public funds expended in 2016 for employee recognition events (\$540) and the amount allowable under the Guideline (\$225); to reimburse the agency \$37.31 for the cost of the arrangement; to complete training on the West Virginia Governmental Ethics Act, and to provide a copy of the Agreement and Order to the RIC Board's Chairperson.

Lobbyists

The Ethics Commission conducts the registration of lobbyists in West Virginia. It also processes and enforces lobbyists' reporting of their lobbying activities and expenditures. The Commission also retains a Certified Public Accountant to conduct annual audits of randomly selected lobbyists' activity reports.

Lobbyist registrations by calendar year:

2018 – 272
2017 – 414
2016 – 406
2015 – 409
2014 – 370

Lobbyist spending by calendar year:

2018 – \$455,617.23
2017 – \$452,918.43
2016 – \$525,846.50
2015 – \$523,642.66
2014 – \$405,532.55

Financial Disclosure Statements

The Ethics Act requires certain public officials and candidates to file Financial Disclosure Statements with the Commission. All Disclosures are available for public inspection and copying. Disclosures filed by members of the Legislature, elected members of the executive department, justices on the Supreme Court of Appeals and candidates for these positions are placed on the Commission’s website.

Following are the numbers of Disclosures processed during the prior five calendar years:

2018 – 3,903
2017 – 2,880
2016 – 3,512
2015 – 2,388
2014 – 2,784

Training – Public Servants and Lobbyists

The Ethics Commission staff provides training on the Ethics Act and the Open Governmental Meetings Act to lobbyists and to large groups of public officials and employees. In addition to “live” training sessions, the Commission provides videos of training on the Ethics Act, the Open Governmental Meetings Act, and lobbyist provisions on its website.

The Commission trained 1,206 public employees and lobbyists in 2018.

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