

# West Virginia Ethics Commission

## 2021 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, public 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 2021 were:

Robert J. Wolfe, Chairperson  
Man, WV

Lindsey Ashley<sup>1</sup>  
Pineville, WV

Lynn Davis  
Wellsburg, WV

Karen Disibbio  
Bluefield, WV

Robert Harman  
Keyser, WV

Suzan Singleton  
Moundsville, WV

Terry Walker  
Kearneysville, WV

Monté Williams  
Morgantown, WV

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<sup>1</sup> Resigned effective May 28, 2021

## 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 2021 were:

James E. Shepherd, II, Chair<sup>2</sup>  
Huntington, WV

Daniel J. Guida  
Weirton, WV

Michael A. Kawash, Chair<sup>3</sup>  
Charleston, WV

## Staff

The staff of the Ethics Commission consists of the Executive Director, General Counsel, two Staff Attorneys, and two Administrative Assistants:

Kimberly B. Weber  
Executive Director

John E. Roush  
Staff Attorney

Andrew R. Herrick  
Staff Attorney

Teri L. Anderson  
Lobbyist Registrar

Theresa M. Kirk  
General Counsel

M. Ellen Briggs  
Executive Assistant

## Budget

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

2021-2022	\$ 719,844.00
2020-2021	\$ 719,844.00
2019-2020	\$ 719,844.00
2018-2019	\$ 701,706.00
2017-2018	\$ 687,840.00

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<sup>2</sup> Resigned from the Probable Cause Review Board effective June 30, 2021

<sup>3</sup> Accepted the nomination as Chair of the Probable Cause Review Board on July 21, 2021

## 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](mailto: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, staff may recommend that the public servant request a new Advisory Opinion.

The following is a summary of the number of responses by the Commission to requests for informal written advice during the past five years:

2021	503
2020	451
2019	391
2018	414
2017	391

The following is a summary of the number of responses by the Commission to requests for oral advice, usually over the telephone, during the past five years:

2021	1,102
2020	1,225
2019	1,496
2018	1,450
2017	1,336

## Formal Opinions/Exemptions

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

The following are the totals over the past five years of formal Advisory Opinions issued regarding the Ethics Act and W. Va. Code § 61-10-15, 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.

<b>Subject Matter</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Ethics (and W. Va. Code § 61-10-15)	21	9	28	13	23
Open Meetings	2	2	4	0	1
ALJ Code of Conduct	0	0	1	0	0
Contract Exemptions	7	6	4	7	2
Employment Exemptions	34	69	57	28	26
Property Exemptions	1	1	0	0	0
School Board	1	0	0	0	0
<b>TOTAL:</b>	<b>66</b>	<b>87</b>	<b>94</b>	<b>48</b>	<b>52</b>

## **Ethics Act 2021 Advisory Opinions**

### **AO 2021-01 - Board of Education**

#### **Category: Private Gain**

A **County Board of Education** asked if it may use public funds to pay its Superintendent's attorney fees, either directly or through the procurement of liability insurance, for the defense of pending Ethics Commission complaints if the complaints arise out of the performance of his duties as Superintendent.

The Ethics Commission held that the Ethics Act does not prohibit the Board of Education from using public funds to provide a defense to the County Superintendent if it finds paying a public official's attorney fees and other defense costs is in the best interest of the Board and that the *Powers* test has been satisfied. The Board of Education may seek a determination of the legality of advance indemnification for attorney fees in a pending Ethics Complaint through an Attorney General opinion or mandamus proceeding.

The three-part test (the "*Powers*" test) for when it is permissible to indemnify a public official for his or her legal fees is:

- 1) the underlying action must arise from the discharge of an official duty in which the government has an interest;
- 2) the officer must have acted in good faith, and
- 3) the agency seeking to indemnify the officer must have either the express or implied power to do so. Syl. pt. 3, *Powers v. Goodwin*, 291 S.E.2d 466 (W. Va. 1982).

The Ethics Commission further held that it does not violate the Ethics Act for the Board of Education to procure liability insurance which may provide a defense to the Superintendent or other school officials and personnel if the Board of Education determines it has legal authority to do so and that it serves a public purpose.

**AO 2021-02 - Mayor**

**Categories: Private Gain; Solicitation of Gifts**

A **Mayor** asked whether he may appear in a video promoting and soliciting donations for a local nonprofit drug and alcohol recovery center.

The Ethics Act prohibits public servants from soliciting gifts, unless they are for a charitable purpose with no resulting direct pecuniary benefit conferred upon the public employee or official. W. Va. Code § 6B-2-5(c). The Requester would not receive a pecuniary benefit from the solicitation for the drug and alcohol recovery center.

The Ethics Commission has applied W. Va. Code § 6B-2-5(b)(1) to restrain a public servant from promoting or endorsing commercial products and services.

The Commission held that the Mayor may appear in a video using his name and public title to promote and solicit donations for a local nonprofit drug and alcohol recovery center because it served a charitable purpose and was not a commercial business.

**AO 2021-03 - Lobbyist**

**Categories: Gifts; Lobbyists**

A **Lobbyist** asked whether the \$25 gift limit applies to charitable contributions made to a nonprofit to recognize a legislator and whether the contribution is a reportable lobbyist expenditure.

A lobbyist is employed by an organization which annually recognizes persons for their achievements in supporting the organization's mission and the population it serves. The organization's 2021 award winners included two members of the West Virginia Legislature. In lieu of giving a gift to the members of the Legislature, the organization offered each member of the Legislature the opportunity to have a \$50 monetary donation made in their name to a registered nonprofit organization of their choosing.

One of the two members of the Legislature opted to have the charitable contribution made to a homeless shelter in his county. The Legislator received nothing of value in return for the donation and, to the best of the lobbyist's knowledge, neither the Legislator nor his immediate family members are employed by the nonprofit which received the donation.

The Ethics Commission held that the gift of a donation to a nonprofit in the name of a public official is permissible and the \$25 gift limit does not apply when neither the public official nor any of his or her family members is employed by the nonprofit or otherwise financially benefits from the donation.

The Ethics Commission also held that lobbyists must report a contribution made on behalf of a public official to a nonprofit on their lobbyist expenditure report.

**AO 2021-04 - Prosecutor**

**Categories: Nepotism; Private Gain**

A **Prosecutor** asked whether she may hire her boyfriend to serve as an Assistant Prosecutor if they do not live together or have a financial relationship.

The Requester was a newly elected Prosecutor. When she was elected, the Prosecutor's Office had two Assistant Prosecutors, but one quit before the Requester was sworn into office.

The Requester requested and received permission from the County Commission to fill the vacant position. She called several attorneys she had worked with in the past to determine if they were interested in the job, and they indicated that they were not. She did not advertise for the position and believed that few people would be interested in it because the County Commission may have planned to eliminate the position in the upcoming fiscal year.

The only resume the Requester received for the position was from her boyfriend. The Requester hired her boyfriend for the Assistant Prosecutor position. The Requester states that her boyfriend is qualified for the job and that they have no financial relationship. She further states that they do not live together.

The anti-nepotism provisions in the Ethics Act and related Legislative Rule prohibit public officials and employees from giving an unfair advantage to relatives and persons with whom they reside. W. Va. Code § 6B-2-5(b)(4) and W. Va. Code R. § 158-6-3 (2017). The nepotism restrictions do not expressly govern the situation presented as the Prosecutor and her boyfriend do not live together.

The Ethics Commission, therefore, analyzed whether the more general private gain restriction in the Act prohibits the Prosecutor from hiring her boyfriend. The Ethics Act does not define the term "private gain." One dictionary definition of the term "gain" is "resources or *advantage acquired or increased.*"

The holding states that the Prosecutor did not formally advertise the job opening for an Assistant Prosecutor position and that it was unknown whether others may have been willing to accept the position knowing it might be temporary. Based upon the facts presented, the Commission held that the Requester's boyfriend received an unfair advantage in being hired for the vacant Assistant Prosecutor position in violation of the Ethics Act's private gain provision. The Commission further held that the Prosecutor must terminate his employment within 30 days of the issuance of the Opinion.

**AO 2021-05 - County Administrator**  
**Categories: Endorsement; Private Gain**

A **County Administrator** asked whether the County may have paid advertisements on its tourism website and whether it may give local hotels free advertising on the same website.

The Ethics Commission found that, consistent with its prior Opinions, a reasonable citizen would not construe advertisements on the County's tourism website as an endorsement of one business over another and could therefore put advertisements on its tourism website. The sale of the advertisement must be made in a fair and even-handed manner. And the County should consider including a disclaimer on the tourism website stating that the advertisements should not be construed as an endorsement by the County of any business.

The Ethics Commission further held that giving free advertising to hotels on the County's tourism website for the purpose of promoting tourism in the region does not constitute use of office for private gain as 1) the hotels are responsible for collecting and remitting the hotel tax that will be used to pay for the website, 2) the Legislature has authorized the expenditure of the funds to promote tourism, and 3) the expenditure is for a public purpose. Therefore, the County may give free advertising on its tourism website to hotels in the region.

**AO 2021-06 - College Professor**  
**Categories: Private Gain; Higher Education**

A **College Professor** of political science asked whether he may:

1) Use public funds to purchase meals for students attending college-approved events at the State Capitol and other off-campus locations, and 2) Invite a candidate for public office to speak to his class without extending an invitation to all candidates in the same race.

*Meals for students* - The Ethics Commission held that public higher education institutions may use public funds for meals for college-approved student events, regardless of whether the event is held on or off campus, if the expenditure is for a legitimate government purpose, e.g., the education of students. Public higher education institutions must also comply with their own policies and other state laws and rules governing hospitality and meal expenditures for students.

*Political candidates speaking to a class* - The Ethics Commission held that when a political candidate is invited to speak to a class at a higher education institution about his or her platform, then the candidate is given the opportunity to sway potential voters to vote for him or her. The Ethics Commission held, therefore, that it violates the private gain provision in the Ethics Act, W. Va. Code § 6B-2-5(b), to exclusively invite and allow one candidate to speak to a class at a public institution of higher education about his or her platform without giving other candidates in the same political race the same opportunity.

The Ethics Commission finds that if a candidate is invited to speak about how to become a candidate or other educational matters that do not involve electioneering, then there is no requirement in the Ethics Act that an invitation to speak to a class be extended to other candidates.

The Ethics Commission declined to find that in all instances all candidates in a political race must be invited to speak to a class. For example, a race may have 20 candidates, and it may not be practical to invite all of them to speak to a class. Nevertheless, inviting candidates to speak to a classroom must be done in a manner that does not materially promote one candidate over another.

**AO 2021-07 - County Assessor**  
**Category: Private Gain**

A **County Assessor** asked whether he may park his county-assigned county vehicle at his home to use for travel related to his public duties but not for commuting to work or other personal use.

A County Assessor uses a county-owned vehicle for travel related to his public duties. He states that he does not and would not use the county vehicle to commute to work or for other personal use. The Requester uses the county vehicle, on average, one week per month to attend out-of-town conferences, classes, and meetings.

His vehicle is currently parked at the courthouse where the Assessor's Office is located. When he goes on out-of-town work-related trips, a family member drives him to and from the courthouse to get and return the county vehicle, so he does not have to leave his personal vehicle in public parking while he is out of town. The Assessor asserts that if the vehicle is kept at his home, then he could leave directly from his home, and in most cases, he would reach the destination in less time than if he first went to the courthouse. This arrangement will also benefit the county by freeing up a parking spot at the courthouse which has limited parking spaces.

The Ethics Commission held that the Requester may park his county-assigned vehicle at his home to use for travel related to his public duties which does not include commuting to work or other personal use. The Opinion notes that the Commission has no authority to determine any possible Federal or state tax consequences that may arise from the Requester's use of the vehicle or the location where it is parked.

**AO 2021-08 - County Board of Education**  
**Categories: Nepotism; Private Gain; Voting**

A **County Board of Education** (BOE) Member asked whether she must recuse herself from participating in updates about a lawsuit filed against the Board by her brother and a related lawsuit in which her brother will likely be a witness.

The Ethics Commission addressed the question of recusal because the updates would constitute part of the BOE's deliberative process relating to a possible vote or other action by the BOE on the lawsuit. Accordingly, the act of hearing updates is covered by the recusal requirements in the Ethics Act. W. Va. Code § 6B-2-5(j)(3).

The Commission held that the member could vote because she did not have a personal financial interest in the outcome of the lawsuit. And, although the sibling was a former employee, the outcome of the lawsuits could not affect his employment or working conditions with the Board and the lawsuit did not arise from his employment. Hence, the nepotism restrictions in the Act and related Legislative Rule, W. Va. Code R. § 158-6-3, did not apply.

Finally, the mere possibility that the member might disclose confidential information obtained through the updates in violation of W. Va. Code § 6B-2-5(e) does not constitute grounds to require recusal.

The Opinion notes that the Ethics Commission declined to create a requirement for recusal that is not contained in the W. Va. Ethics Act. The language of the Act is plain and unambiguous and will be applied rather than construed. *Young v. State*, 241 W.Va. 489, 826 S.E.2d 346 (W. Va. 2019). The Commission overruled Advisory Opinions 1999-19, 2011-15 and 2011-16, finding that the Opinions departed from the principle that the voting restrictions must be applied based upon the plain language in the Act.

## **AO 2021-09 - Chief of Police**

### **Category: Gifts**

A **City Chief of Police** asks whether the City's Police Officers or Police Department may keep gift cards, valued over \$25, given to them by a citizen as an appreciation gift for their service.

A citizen manages an apartment complex located within City limits. To show her appreciation for the City's Police Department, the citizen gave each Police Officer in the Department a thank you card containing gift cards from various restaurants in the area and a \$25 prepaid Visa card from the apartment complex that she manages. The total value of the gifts to each Police Officer is, therefore, approximately \$75.

The citizen also gave various gift cards to the Chief of Police and told him that the gift cards were to be used for the benefit of the Police Department. The gift cards were from a donut shop, a pizzeria, and a Mexican restaurant, and the combined value of these gift cards is approximately \$70.

Neither the Police Department nor its Officers asked the citizen to solicit or give them the gift cards. The citizen asked the local restaurants for the gift cards for the Police Officers on her own initiative.

The Ethics Commission held that there is a sufficient nexus between the citizen and the Police Department to make her a person who engages in activities which are controlled by the Police Department. The citizen is therefore an interested party for purposes of the gift restrictions in the Ethics Act and related Legislative Rule, and the Police Officers and Police Department may only accept gifts from her within the gift limits prescribed in the Ethics Act, related Legislative Rule, and the Ethics Commission's Gift Guidelines. The fact that the citizen bundled gifts from local businesses does not change the analysis or conclusion.

The gift cards to the Police Department from the citizen may only be kept and used by the Police Department if the Police Department uses them for a public purpose. For example, the Police Department may give the gift cards to citizens as part of Police Department programs aimed at improving community relationships.

### **AO 2021-10 - County Commissioner**

#### **Category: W. Va. Code § 61-10-15**

A **County Commissioner** asked whether she may be employed as the executive director of the only Convention and Visitors Bureau ("CVB") located in her County which is funded, in part, by the County Commission from its hotel occupation tax ("hotel tax") revenues.

The CVB has a board of directors comprised of 16 members representing counties, municipalities, and various business and tourism interests. Each of the two participating county commissions appoints a board member. The County's total appropriation to the CVB was about 43 percent of the CVB's fiscal year 2019-2020 budget.

The Commission considered whether the Requester may exercise the requisite "voice, influence, or control" over the CVB's employment contracts, under W. Va. Code § 61-10-15, to prohibit her from being employed by the CVB as its executive director.

The Ethics Commission has held that a county commissioner may not be employed by (or have contracts with) a county subunit, such as a solid waste authority, an ambulance authority, hospital, public service district, or development authority because the county commission appoints all the members to these boards and has the authority to make contributions to them. In this case, the County Commission is limited to appointing only one of 16 board members of the CVB. Therefore, the Commission found that the County's appointment power *alone* was insufficient to prohibit the Requester's employment with the CVB.

Next, the Ethics Commission looked at whether the County Commission's appropriation of money, amounting to approximately 43 percent of the CVB's budget, gives the County Commission voice, influence, or control over the CVB's employment contracts and found that a contribution of this size could be sufficient to prohibit the employment of the Commissioner by the CVB.

The Commission also factored in that the County Commission is “mandated” by statute to contribute 50 percent of its hotel tax proceeds to the CVBs in its County and currently there is only one CVB. The Commission found that - even so - the County does have some control over the amount of funding received by the CVB because the Commission decides whether to institute a hotel tax, may adjust the tax rate between three and six percent, is authorized to allocate the hotel tax funds in different proportions to newly established CVBs, and can find that the CVB is not eligible for funding and deny funding.

The Ethics Commission held that the County Commissioner may not be employed by the CVB because the County does have some voice, influence, or control over the amount of its hotel tax funding that the CVB receives, and the County Commission appropriated approximately 43 percent of the CVB’s budget.

### **AO 2021-11 - City**

#### **Category: Contracts**

A **City** asked whether businesses owned by City Council members or City employees are eligible to receive small business grants awarded by the City.

The Requester created a Small Business Grant program (“Program”) for local businesses. The Mayor formed a Scoring Committee and appointed members to evaluate Program applications and award grants based on a scoring rubric. The Scoring Committee consists of three City Council members, the City’s Chamber of Commerce Executive Director, and the City’s Convention and Bureau President. Grant funds are issued for specific types of projects and are only issued by the City on a reimbursement basis once the approved projects have been completed and upon review and approval by the City’s Office of Economic and Community Development. Grant recipients must match any award amount by 25 percent.

*City Council members* – The Ethics Commission held that businesses owned by City Council members may apply for and receive grants awarded through the Program even though City Council members may have direct authority or control over the program because this type of grant aimed at the general public is not the type of contract the Legislature intended the Ethics Act to prohibit.

*City employees* – The Ethics Commission held that businesses owned by City employees may also apply for and receive grants awarded through the City’s program because there were no facts to suggest City employees could have direct authority or control over the Program even if the public contracts prohibition applied to this type of grant.

### **AO 2021-12 - Municipal Officials**

#### **Categories: Voting and Recusal; Conflict of Interest**

**Municipal officials** asked whether they must recuse themselves from participating in matters involving an emergency services organization to which the municipality makes

annual appropriations when the officials are uncompensated members and stockholders of the organization, and, in one case, an officer and a board member.

The Ethics Commission held that the Ethics Act requires the mayor to recuse himself from the deliberation and decision on authorizing funding for an organization that provides emergency services for the municipality. The organization had many characteristics of a non-profit corporation but was incorporated as a for-profit corporation. Accordingly, the organization met the definition of “business” in W. Va. Code § 6B-1-3(b). As an unpaid officer and member of the board of directors of the organization, the mayor met the definition of associated with the business pursuant to W. Va. Code § 6B-2-5(j)(1)(A). As a result, the mayor is required to recuse himself from any deliberations or decisions related to the organization.

The recorder and three of the city council members were members and stockholders of the organization. As members, they performed the tasks associated with providing emergency services to the municipality but did so on a volunteer basis. Accordingly, they did not meet the definition of “employee” pursuant to W. Va. Code § 6B-1-3(d). These four officials are associated with the organization if they hold five percent or more of the outstanding stock of that class of stock in the organization pursuant to W. Va. Code § 6B-2-5(j)(1)(A). If they are associated with the organization, they must recuse themselves from all matters pertaining to the organization as prescribed by W. Va. Code § 6B-2-5(j)(3) and W. Va. Code R. § 158-8-5.

**AO 2021-13 - County Board of Education Member**  
**Categories: Contracts; 61-10-15; Voting**

A **County Board of Education Member** asks whether she may be employed as a teacher by a private, nonprofit school which contracts with the BOE to provide educational and behavioral health services to students in the County School System.

The BOE contracts with a private, out-of-state, nonprofit school (nonprofit school) to provide services to students who require additional assistance due to behavioral health issues or intellectual disabilities. Some of the BOE’s students attend day school at the nonprofit school. The contract with the nonprofit school contains agreed-to rates for the services it provides.

The BOE member (or Requester) is employed as a math teacher at the nonprofit school. The nonprofit school pays her an annual salary and issues her a W-2. Her employment contract expressly states that she is not entitled to overtime, and her salary is not tied to the number of students that she teaches.

A student from the County School System is currently a student in the class the Requester teaches at the nonprofit school. The Requester did not request that the student be assigned to her, and she also teaches children from other counties and states.

The Requester, in her capacity as a teacher at the nonprofit school, has attended Individualized Educational Program (IEP) team meetings, at which a BOE staff member is present, to discuss the student's progress and needs.

The BOE approves payments to the nonprofit school at the BOE's monthly meeting. The BOE's Director of Special Education has a breakdown of charges for the services provided by the nonprofit school to each student, but the BOE does not individually consider each invoice. The BOE normally votes to approve all monthly invoices to all vendors, which are listed on a spreadsheet, as one agenda item.

The Ethics Commission held in Advisory Opinion 2002-02 that under the Ethics Act, a board of education member's employment by a hospital that contracted with the BOE did not give him a prohibited financial interest in the contract between the hospital and the BOE. A public official's employment by a business or nonprofit entity does not, therefore, make her associated with the business or nonprofit for purposes of imputing to her a financial interest in the contract under the Ethics Act.

The Ethics Act does not, therefore, prohibit the Requester's employment with a nonprofit school that contracts with the BOE. The Ethics Commission also held that W. Va. Code § 61-10-15 does not prohibit her employment.

In analyzing § 61-10-15, the Ethics Commission found that she 1) is not a party to the contract between the BOE and the nonprofit school, 2) is not an owner, a shareholder, a director, or an officer of a private entity under the contract, and 3) receives no commission, bonus, or other direct remuneration or thing of value by virtue of the contract. The Ethics Commission held that she may not participate in the deliberations or awarding of the contract or approve or otherwise authorize the payment for any services performed or supplies furnished under the contract. If a matter relating to the nonprofit school comes before the BOE, then the Requester must recuse herself from all discussions and votes on such matter. W. Va. Code § 61-10-15(e)(4) and W. Va. Code § 6B-2-5(j)(1)(D).

If the BOE budget includes a line item for payments to the nonprofit school, then the Requester must follow the guidance in Advisory Opinion 2010-13. The Requester may vote on the overall budget, but recusal is required if the BOE discusses a line item that affects her private employer. When the BOE votes to authorize the payment of monthly invoices, the Requester must request that the invoice payments to her nonprofit school employer be considered separately so that she may recuse herself from the deliberations and votes on the invoices being approved by the BOE for payment to the nonprofit school.

**AO 2021-14 - County Commissioner**  
**Category: Voting**

A **County Commissioner's** business owns a 54-acre vacant tract of real property located in a Corridor Development Plan of the County's Comprehensive Plan ("Plan"). The property in the Plan is zoned as rural residential which precludes the use of the property for commercial purposes. The Requester asserts that modification of the Plan could

make it easier to change the zoning to allow the property to be used for business development.

The County Commissioner's business owns one of 100 parcels subject to the Plan; therefore, he is a member of a class of five or more similarly situated persons, and he may vote on matters relating to modifying the Plan.

**AO 2021-15 - County Health Department**  
**Category: Private Gain**

A **County Health Department** asked whether its 24/7 employees may use their agency-provided cellular phone as their personal cellular phone when the department has an unlimited-use cell /data plan.

The Ethics Commission held that an agency may not allow its employees to use, for free, their agency-provided cell phone as their personal cell phone device and plan. Incidental and de minimis personal use of an agency cell phone which does not result in an additional cost to the agency is still okay.

Exception -- an agency may allow its employees to use their agency-provided cellular phone and plan as their personal cell phone if the employees pay a reasonable fee to the agency for the personal use and do not use it for commercial or political campaign purposes.

**AO 2021-16 - County School Superintendent**  
**Category: Private Gain**

A **County School Superintendent** asked whether a Board of Education member or employee may use or allow friends or relatives to use a Board of Education gymnasium under terms and conditions not afforded to the public.

A Board of Education owns several facilities with gymnasiums attached. Individuals may use these facilities by reserving and paying for them in accordance with the BOE's facility use policy. The Requester stated that a BOE member or employee has a key to one of the facilities. This individual used or intended to use the key to gain entry to the facility for himself and/or other individuals without making the required reservation or paying the applicable rental fees.

The Ethics Commission held that the Ethics Act, at W. Va. Code § 6B-2-5(b)(1) and W. Va. Code R. § 158-6-5, prohibits a BOE member or employee from allowing friends, relatives, or others to use a BOE gymnasium or facility under terms and conditions unavailable to the public. A BOE member or employee is also prohibited from accessing the BOE's gymnasium in an unauthorized manner or using the gymnasium for an unauthorized purpose.

## **AO 2021-17- City**

### **Category: Gifts, extra compensation**

A **City** asked whether employees hired at its sports complex could accept tips. The employees were hired to operate a customer service desk, run the concession stand, direct youth sports, provide clerical work, and serve as lifeguards and fitness attendants. The employees were paid at least the West Virginia minimum wage, \$8.75 per hour, and work either part-time or full-time. Some of the positions were seasonal, but even the seasonal workers were hired as (Form W-2) employees and not independent contractors. The city was not treating the employees as “tipped service employees” for Internal Revenue Service tax purposes.

The Ethics Act applies to public officials and employees, including part-time employees. An independent contractor, however, is not a public employee, and therefore not subject to the Ethics Act. The Ethics Commission held that the definition of public employee includes seasonal employees who receive a W-2 from their government agency employer.

The Commission considered two prohibited extra compensation provisions of the Act. First, W. Va. Code § 6B-2-5(h)(6), which states, “A full-time public official or *full-time* [emphasis added] public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities. The Commission held that the full-time City employees are prohibited from accepting tips from members of the public under W. Va. Code § 6B-2-5(h)(6) because the employees are being fully compensated by the City.

Second, W. Va. Code § 6B-2-5(m) provides, “No... public employee shall knowingly request or accept from any governmental entity compensation... actually paid by any other person.” The Commission held the city employees, including part-time employees, are prohibited from accepting tips from members of the public under W. Va. Code § 6B-2-5(m) because the employees are being fully compensated by the city.

Last, the Act prohibits public servants from accepting gifts of more than \$25 per calendar year from four defined categories of people: lobbyists, persons doing or seeking to do business of any kind with their governmental agency, persons regulated by their agency, and persons who have a unique financial interest in the employee’s performance of his/her job duties. The Commission found that the customers fall under the category of persons “doing or seeking to do business of any kind” with the city at the sports complex. Therefore, the prohibited gift provision prohibits the sports complex employees from accepting gifts valued at more than \$25.

## **AO 2021-18 - Community and Technical College President**

### **Categories: Employment; Public Contract; 61-10-15**

A **Community and Technical College President** asked whether the College may employ a county commissioner. W. Va. Code § 61-10-15 prohibits county officials from

having an interest in contracts, including employment, over which they exercise voice, influence, or control.

The Commission has consistently stated in past Advisory Opinions that two factors to consider in whether a county public official may exercise voice, influence, or control over his or her employment contract are through a county board's 1) power to make appointments to boards or commissions who employ a public official, and/or 2) appropriations of funding to such boards or commissions.

Considering these factors, the Ethics Commission held that the county commissioner may be employed by the Community College because county commissions do not appoint community college board members and the county commission does not appropriate money to the Community College. The private gain and public contract restrictions in the Ethics Act, at W. Va. Code §§ 6B-2-5(b) and (d), did not prohibit his employment either.

### **AO 2021-19 - Town Recorder**

#### **Categories: Private Gain; Name/Likeness Use**

A **Town Recorder** asked whether a Town employee may have on her desk a cup that has a campaign slogan for a former candidate for federal office. The employee brings the cup to work daily and keeps it on her workstation desk in the Town Hall. The employee, who has the cup, is the first and main point of contact for members of the public who come to the Town Hall.

The Ethics Commission held that there is no prohibition in the Ethics Act against the Town employee bringing a cup that contains a campaign slogan for a former candidate for federal office to Town Hall and keeping the cup in her personal workspace. The employee may not, however, display the cup on her desk in a manner which makes the campaign slogan visible to the public; even though the election is over, displaying the former candidate's name in an area or in a manner which makes it visible to the public could constitute advertising a political party which is prohibited by the restrictions in the Ethics Act, at W. Va. Code § 6B-2-5(b) and § 6B-2B-2(b)(1).

### **AO 2021-20 - County Commission**

#### **Category: Nepotism**

A **County Commission** asked whether the Sheriff's son may be employed as the Director of Courthouse Security if the Sheriff delegates responsibility for this hiring and supervision to his Chief Deputy.

The County Commission and the Sheriff are responsible for providing security at the County Courthouse. A County Commission Order provides that the County Commission is responsible for funding the salaries of Courthouse security personnel and that the Sheriff and his Chief of Courthouse Security are responsible for hiring and supervising those employees.

The Sheriff's son is currently employed by the County as a Courthouse Security Officer. The Chief of Courthouse Security has recently retired. The Sheriff's Office published an advertisement in a newspaper seeking applicants for the position. The Sheriff knew his son was a potential applicant, and he therefore delegated the responsibility for hiring for the position to his Chief Deputy.

The Ethics Commission considered the provisions in the Ethics Act and related Legislative Rule which require a public official to remove him or herself to the extent possible when a relative is being considered for employment. W. Va. Code § 6B-2-5(b)(4) and W. Va. Code R. § 158-6-3. The Commission also considered the language in the cited provisions which allows public officials to use a subordinate in employment and supervision matters involving a relative when the public official cannot, as a matter of law, delegate the powers of his or her office to another.

The Ethics Commission held that, based upon the applicable law, the Sheriff may allow his Chief Deputy, a subordinate, to be responsible for hiring for the position of Chief of Security and supervise the Sheriff's son if the Sheriff removes himself from decisions affecting the working conditions of his son to the extent possible. The Sheriff may not act to unlawfully favor his son.

**AO 2021-21 - County Board of Education Member**  
**Categories: Contracts; § 61-10-15; Voting**

A County **Board of Education (BOE) Member** who owns a construction company asks whether he must recuse himself from matters affecting the financial interests of his private customers.

The BOE member's construction company performs construction projects for a private corporation that owns and operates a sports, well-being, and event complex and for other entities that own or lease property within the complex. The BOE owns two facilities within the complex and currently has a lease to purchase contract for a third facility with the complex. Additionally, the BOE rents athletic facilities within the complex and pays common usage fees to the complex. The BOE member's construction company does not act as a contractor or subcontractor for any project funded in part or in whole by the BOE.

The Ethics Commission held that neither the Ethics Act, at W. Va. Code § 6B-2-5(d), nor W. Va. Code § 61-10-15(a) prohibits the BOE member's construction company from performing construction projects for the complex because his company does not act as a contractor or subcontractor on any project funded in whole or in part by the county board of education. The Ethics Commission further held that the BOE member is not associated with the complex pursuant to the definition provided by W. Va. Code § 6B-2-5(j)(1)(A) as he is not a director, officer, owner, holder of five percent or more of outstanding stock of the complex, employee, or compensated agent of the complex.

Further, the Ethics Commission held that the BOE member does not have a direct or immediate financial interest in matters concerning the complex that come before the county BOE per Advisory Opinion 2013-18. Accordingly, the Ethics Commission held that

the Ethics Act does not require the BOE member to recuse himself from matters involving the complex and the board of education. (This Advisory Opinion partially overrules Advisory Opinions 2005-12 and 2012-07 to the extent that they require recusal from matters involving a current customer of a public official.)

**AO 2021-22 - City Council Member**  
**Category: Confidential Information**

A **City Council member** asked whether other Council members or the City Attorney may prohibit him from recording executive sessions.

The West Virginia Open Governmental Meetings Act allows governing bodies, including city councils, to enter into executive sessions closed to the public during public meetings. The Requester asked whether it violates the Ethics Act for other City Officials or the City Attorney to prohibit him from audio recording executive sessions.

The Ethics Commission held that no provision in the Ethics Act prohibits a governing body from barring audio recordings of executive sessions of public meetings. The Ethics Act also does not prohibit a public official from audio recording executive sessions, but the recording may not be improperly disclosed or used to further the official's own interests or the interests of another person if it contains confidential information.

In so holding, the Ethics Commission noted that the Ethics Act does not define what information is considered confidential for purposes of W. Va. Code § 6B-2-5(e), but that other statutes, rules, laws, or policies that render information confidential may render the same information confidential under the Ethics Act.

**AO 2021-23 - County Commission**  
**Category: Private Gain**

A **County Commission** asked whether it may use American Rescue Plan (ARP) funds from the Federal government to help fund a waterline extension project given that a private developer may uniquely benefit from the project.

A developer requested the project to provide potable water to his proposed cabin resort development. The waterline service would run along a public road and would be available to two other commercial landowners in the area. One of these properties has a former restaurant and motel on it. A cable company is operating on the other property. The developer expects all three properties to benefit from the waterline extension project. Each property owner would have the option to run their private lines to the connection points on the public road.

The County Commission and the developer assert that the cabin resort will provide a substantial economic benefit to local businesses and more tax revenue to the county. They assert that the area needs overnight accommodations and other amenities to support its burgeoning outdoor trail riding industry. The County Commissioners and the developer assert that no financial or familial relationships exist between the developer

and any of the Commissioners. The Commission stated that it does not have the authority to opine whether the subject project is eligible for ARP funds. “This Opinion is limited to whether providing funding for the requested waterline extension, which may uniquely benefit one developer, would violate the Ethics Act.”

The Commission has previously found that economic development or promoting tourism provides an overriding public benefit that justifies private gain to an individual. In Advisory Opinion 2021-05, for example, the Commission held that a county may give free advertising to hotels on the County’s tourism website for the purpose of promoting tourism in the region.

The Ethics Commission held that if the County Commission determines that building the proposed waterline extension project benefits the County by promoting tourism or economic development, then using American Rescue Plan funds for the project would not violate the Ethics Act even if the developer may uniquely benefit from the project.

## **Open Meetings Advisory Opinions**

### **OMAO 2021-01 - Westover City Council Member**

**Categories: Executive Session; Meeting Procedures**

A **City Council member** for the City of Westover asked whether other Council members or the City Attorney may prohibit him from recording executive sessions.

The City of Westover holds portions of public meetings in executive sessions closed to the public. The Requester asked whether it violates the Ethics Act for other City Officials or the City Attorney to prohibit him from audio recording executive sessions.

The Committee on Open Governmental Meetings held that the Open Meetings Act does not prohibit a public official from audio recording executive sessions, nor does it prohibit a governing body from barring audio recordings of executive sessions. The Committee also held that in regard to the question of whether the City Attorney may direct a City Official to cease recording an executive session, the Committee did not have authority to rule on the express or implied authority of a City Attorney.

## **Contract Exemptions**

The Ethics Act prohibits public officials and 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 2021 in the following matters:

**CE 2021-01 - Town of Clendenin**

The Ethics Commission denied a contract exemption request in which Clendenin asked to use FEMA reimbursement funds in the amount of \$122,713 to pay Council member John B. Shelton, Jr., for his work, since the 2016 flood, as the Town's Project Manager for its FEMA Hazard Mitigation Grant Program projects.

On May 23, 2016, just weeks before the flood of 2016, the Town appointed Council member Shelton as the FEMA Hazard Project Manager. On August 28, 2017, the Town again re-appointed Mr. Shelton to this position.

The Town did not seek applicants or run advertisements for the FEMA Hazard Project Manager Position in these years. The Town states that the appointment of Council member Shelton was made because he was already serving as the Town's Floodplain Manager and was gaining project manager experience over the years.

Council member Shelton did not recuse himself from the discussion and vote regarding his appointment as the FEMA Hazard Project Manager in May 2016 or 2017. Council member Shelton, having worked as a FEMA Hazard Project Manager for the Town in 2013 and being compensated, expected to be compensated at the time of the council action making him Project Manager in 2016 and 2017.

The Commission may grant an exemption from the prohibitions in W. Va. Code § 6B-2-5(d) if the prohibition results in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency. The burden is upon the Requester to demonstrate sufficient evidence and facts in support of an exemption. Contract Exemption 2010-03.

The Requester did not meet its burden of demonstrating that Council member Shelton was the best person qualified for the FEMA Hazard Project Manager position. The Town chose not to place the position out for bid or to seek other applicants. Further, the Council member was involved in selecting himself for the position, both in 2016 and 2017, and he expected to be compensated for his work.

In denying the request, the Commission concluded that the possible financial hardship and substantial interference with the Town's operations are a result of the Town's noncompliance with the Act when, in 2016, the Town voted to appoint one of its own members to the Project Manager position.

**CE 2021-02 - withdrawn by requester**

### **CE 2021-03 - Clay County Commission**

The Ethics Commission granted the Clay County Commission an exemption to allow it to contract with King's Trucking & Wrecker Services, a business owned by Fran King, a Clay County Commission, in an amount not to exceed \$3,500 from November 7, 2020, through November 7, 2021, to tow County ambulances and other emergency vehicles when King's is the closest towing service to the wreck.

The Commission found that Clay County would incur increased costs and additional wait times of up to an hour if it is unable to use King's for wrecker services in Clay County for County emergency vehicles.

### **Property Exemptions**

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 no Property Exemptions in 2021.

### **Employment Exemptions**

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 over whom they or a subordinate exercise control at present or in the prior 12 months.

The following Employment Exemptions were granted during 2021:

- EE 2021-01** Ryan Satterfield, Incident and Mobility Management Coordinator, Department of Transportation, Division of Highways
- EE 2021-02** Edwin Clarkson, Technical Analyst, Public Service Commission of West Virginia
- EE 2021-03** Garrett M. Jacobs, Commissioner, Department of Health and Human Resources, Bureau for Child Support Enforcement
- EE 2021-04** Wesley H. White, Deputy Secretary, Department of Commerce
- EE 2021-05** Timothy J. Keller, Environmental Inspector, Department of Environmental Protection
- EE 2021-06** Chad E. Robinson, Assistant Director, Operations Division, Department of Transportation, Division of Highways

- EE 2021-07** Michael R. Jones, Chemist 3, Environmental and Coatings Section, Department of Transportation, Division of Highways
- EE 2021-08** David S. Cox, Highway Transportation Engineering Technician (HTRET), Department of Transportation, Division of Highways
- EE 2021-09** Mary L. Hamrick, Highway Engineer Trainee (HWENGTR II), Department of Transportation, Division of Highways
- EE 2021-10** Christopher A. Farmer, Geologist 4, State Tax Department, Property Tax Division
- EE 2021-11** James T. Collins, Assistant Deputy State Highway Engineer (Construction), Department of Transportation, Division of Highways
- EE 2021-12** Travis W. Knighton, P.E., District One, Department of Transportation, Division of Highways
- EE 2021-13** Cynthia L. Wilson, Attorney 3, Public Service Commission
- EE 2021-14** Christopher M. Miller, Realty Manager, Department of Transportation, Division of Highways
- EE 2021-15** Jack W. Wroten, Highway Realty Agent II, Department of Transportation, Division of Highways
- EE 2021-16** Mary Catherine Tuckwiller, Attorney, Department of Education
- EE 2021-17** Clifton E. Farley, III, Transportation Engineering Technician Senior, Department of Transportation, Division of Highways
- EE 2021-18** John C. Morrison, Highway Civil Rights Compliance Specialist, Department of Transportation, Division of Highways
- EE 2021-19** Evan L. Bailey, Transportation Engineering Technician Senior, Department of Transportation, Division of Highways
- EE 2021-20** Craig G. Cottrill, Transportation Engineering Technician Level III, Department of Transportation, Division of Highways
- EE 2021-21** Austin O. Edman, Bridge Evaluation Engineer, Department of Transportation, Division of Highways
- EE 2021-22** James E. Lambert, Highway Division Manager 2, Department of Transportation, Division of Highways
- EE 2021-23** Jessica Wright, Interim Co-Director, Office of Community Health Systems and Health Promotion, Department of Health and Human Resources, Bureau for Public Health
- EE 2021-24** James A. Rossi, Highway District Manager, Department of Transportation, Division of Highways
- EE 2021-25** Russell L. Kees, Contract Management Regional Coordinator, Department of Transportation, Division of Highways
- EE 2021-26** Carter Muncy, Project Supervisor, Department of Transportation, Division of Highways

## 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 there is 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 public employment be terminated.

## Complaints

Calendar year	Total New Complaints filed	Initiated by Commission (of total filed)	Dismissed without investigation	Investigated during year	Dismissed after investigation	Resolved via Conciliation Agreement
2021	90	0	85	19	15	3
2020	127	0	81	37	40	9
2019	105	0	35	65	50	6
2018	76	4	32	45	37	8
2017	85	5	61	30	24	4

\*Note that this chart does not reflect the resolution of the New Complaints in each calendar year. This chart reflects the resolutions of Complaints pending in the designated year regardless of the year the Complaint was filed.

Calendar year	Total Complaints filed	Initiated by Commission (of total filed)	Dismissed without investigation	Investigated	Dismissed after investigation	Resolved via Conciliation Agreement	Still Pending
2021	90	0	72	18	1	2	15

\*Note that this chart reflects the status of the New Complaints filed in 2021, 15 of which are still pending.

## Staff-initiated Investigations

The Commission may initiate complaints and make investigations even in the absence of a verified Complaint by a citizen.

Calendar Year	Total Staff-Initiated Investigations	Total Complaints filed by Commission
2021	30	0
2020	28	0
2019	27	0
2018	29	4
2017	19	5

## Public Hearings

No public hearings were held during 2021.

## Conciliation Agreements

### VCRB 2020-18: Larry Palmer, Sheriff, Brooke County

In November 2017, the Sheriff's Office, at the direction of Sheriff Palmer, used public funds to purchase 100 coins containing Palmer's name. The total cost of the coins was \$815 -- \$8.15 per coin. The frontside of the coins had the Sheriff's Office badge insignia and stated: "Brooke County Sheriff's Office, Sheriff Larry C. Palmer, Jr." The reverse side of the coin states: "Serving Brooke County for 220 Years, 1797-2017."

Palmer states that approximately 60 coins have been distributed since 2017 to Sheriff's Office employees, including new hires. Palmer also gave some coins to other County public officials and donated two coins to the Elks Lodge for a fundraiser.

The West Virginia Ethics Act prohibits public officials from using public funds to purchase certain items, including trinkets, that contain their name or likeness (picture). Palmer states that he was aware of this restriction but believed purchasing the coins was permissible as an employee recognition memento per the Ethics Commission Employee Recognition Guideline which states that the expenditure of public funds to recognize employees does not violate the Ethics Act if an agency expends no more than a total of \$25 per employee per fiscal year. Palmer states that the Department spent less than \$25 per employee per fiscal year, but that he did not, however, seek advice from the Ethics Commission regarding whether the purchase complied with the Ethics Act or the Employee Recognition Guideline.

Palmer admitted that he violated the restrictions in the Ethics Act against using public funds to purchase or distribute trinkets containing his name. Palmer further acknowledged that he should have sought advice from the Ethics Commission to determine if the purchase of the coins, as an employee recognition memento, was permissible. Palmer agreed to the following sanctions: 1. Reimbursement to the Brooke County Sheriff's Office in the amount of \$326, a good faith estimate of the cost of coins distributed to persons who were not employees of the Sheriff's Office, to be paid to the Sheriff's Office by April 15, 2021; and 2. To cease and desist from using public funds to purchase trinkets that contain his name.

#### **VCRB 2021-01: Mike Stover, Circuit Clerk, Wyoming County**

On the night of December 19, 2020, a Town of Mullens police officer went to Stover's home in response to a call from Stover's adult son alleging that Stover had assaulted him. Stover was inebriated. The officer arrested Stover.

During the arrest and subsequent transport to the jail, Stover advised the officer on several occasions that he was the Circuit Clerk. Stover attempted by various means to persuade the officer not to transport him to jail. In the process, Stover made several remarks which a reasonable person could construe as threats to use his Circuit Clerk position to retaliate against the arresting officer and/or other members of the Mullens Police Department if they transported him to the West Virginia Southern Regional Jail and/or failed to contact the Magistrate to see if the Magistrate would conduct Stover's arraignment after the Magistrate Court's normal hours.

The police officers were not swayed by Stover's remarks. They followed standard procedure and transported Stover to the West Virginia Southern Regional Jail. Stover made no attempt to contact or retaliate against the arresting officer or any other member of the Mullens Police Department for the events on the night of his arrest.

Stover admitted that his remarks to the police officers were inappropriate and that a reasonable person could have construed his comments as threats to use the power and prestige of his public office for private gain in violation of the Ethics Act, at W. Va. Code § 6B-2-5(b). Stover agreed to pay a fine in the amount of \$500, to receive a public reprimand, and to undergo training on the Ethics Act.

#### **VCRB 2021-37: Jan Dzierzak, Park Superintendent, Division of Natural Resources**

The Respondent is the Superintendent at a state park. The state park purchased a Sam's Club membership card with public funds for state park purchases. From June 2019 to November 2020, the Respondent used the state park Sam's Club membership for over 39 personal purchases that he paid for with personal funds. The Respondent received the membership benefits by using the state park membership, but did not use the state's tax exempt status and the use of the membership did not result in any additional cost to the state.

In Advisory Opinion 2010-18, the Ethics Commission held that it would be a violation of the Ethics Act's private gain provision, found at W. Va. Code § 6B-2-5(b), for a public servant to use a Sam's Club membership card purchased with public funds even if there was no additional cost to the public agency.

The Respondent acknowledged that the use of the state park Sam's Club membership did not comply with the Ethics Act at W. Va. Code § 6B-2-5(b). The Respondent agreed to undergo training on the Ethics Act and the Ethics Commission entered an Order directing the Respondent to cease and desist from using the state park membership card to make personal purchases.

## 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.

### Active Registered Lobbyist in calendar year

2021 – 321  
2020 - 347  
2019 - 358  
2018 - 387  
2017 - 368

### Lobbyist registrations by calendar year

2021 – 199  
2020 – 131  
2019 – 220  
2018 – 204  
2017 – 251

### Lobbyist spending by calendar year

2021 – \$342,983.58  
2020 – \$713,783.11  
2019 – \$498,382.31  
2018 – \$455,617.23  
2017 – \$452,918.43

## 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:

2021 – 3,240  
2020 – 3,285  
2019 – 3,017  
2018 – 3,903  
2017 – 2,880

## 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 1,250 public officials and employees and lobbyists in 2021.

*Report issued January 21, 2022*