

West Virginia Ethics Commission

2022 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 2022 were:

Robert J. Wolfe, Chairperson
Man, WV

Suzan Singleton
Moundsville, WV

Lynn Davis
Wellsburg, WV

Karen Disibbio
Bluefield, WV

Robert Harman
Keyser, WV

Terry Walker
Kearneysville, WV

Monté Williams¹
Morgantown, WV

¹ resigned effective September 6, 2022

The Commission has three vacancies.

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 2022 were:

Michael A. Kawash, Chair
Charleston, WV

Daniel J. Guida
Weirton, WV

The Probable Cause Review Board has one vacancy.

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

Theresa M. Kirk
General Counsel

Teri L. Anderson
Lobbyist Registrar

Andrew R. Herrick
Staff Attorney

M. Ellen Briggs
Executive Assistant

Budget

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

2022-2023	\$ 737,544.00
2021-2022	\$ 719,844.00
2020-2021	\$ 719,844.00
2019-2020	\$ 719,844.00
2018-2019	\$ 701,706.00

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, 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:

2022	610
2021	503
2020	451
2019	391
2018	414

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:

2022*	2,293
2021	1,102
2020	1,225
2019	1,496
2018	1,450

* In 2022, the annual report began including oral advice given by all staff members, not just attorneys.

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.

Subject Matter	2018	2019	2020	2021	2022
Ethics (and W. Va. Code § 61-10-15)	9	28	13	23	20
Open Meetings	2	4	0	1	2
ALJ Code of Conduct	0	1	0	0	0
Contract Exemptions	6	4	7	2	4
Employment Exemptions	69	57	28	26	67
Property Exemptions	1	0	0	0	0
School Board	0	0	0	0	2
TOTAL:	87	94	48	52	95

Ethics Act Advisory Opinions (AO) 2022

[Advisory Opinion 2022-01](#) - State Commission Member

Categories: Contracts; Voting

A **State Commission Member** asked whether the Commission may contract with a person who serves on another state board that provides administrative support to the State Commission.

The purpose of the State Commission is to facilitate the construction of a memorial on the State Capitol grounds. The Commission's members are appointed by the Governor, and the Legislature has charged a related state board with providing staffing and administrative support to the State Commission.

The Legislature appropriated money to the State Commission to use in accomplishing its mission. The appropriated funds are administered by the related state board, but the State Commission decides how the funds will be spent.

The State Commission must gather public input and solicit funds and proposals for the memorial. To achieve this objective, the State Commission has hired four persons, on

short-term contracts, to educate the public about the memorial and to solicit input on the memorial's design.

The State Commission solicited applications for the contract positions by sending job descriptions to various departments and professors with expertise in communications, history, and related areas at two public universities. Each contractor will be paid \$5,000 from the State Commission's appropriated funds.

One of the persons selected by the State Commission as a contractor serves on the related state board. Neither the state board nor the board member selected as a contractor had any role in creating the job description; drafting the contract, or recommending and selecting the contractors. The power to award the contract rests solely with the State Commission and not the state board.

The Ethics Commission held that the related state board and its board members do not exercise direct authority or control over the State Commission's contracts, and that the state board member may, therefore, be awarded the contract by the State Commission because the state board member had no role in drafting or awarding the contract in question.

The Ethics Commission further held that the exception for part-time appointed public officials in the Ethics Act, at W. Va. Code § 6B-2-5(d)(1), applies. Hence, it is also permissible for the State Commission to award the contract to the state board member per this exception. The State Commission may not unlawfully favor the state board member, and the state board member must continue to remove herself from any decisions affecting the State Commission contract.

[Advisory Opinion 2022-02](#) - County Commission Employee

Categories: Private Gain; Employment

A **County Commission employee** asked whether she may be a city council candidate or member while simultaneously being employed by the County.

The Requester is a county commission employee who provides administrative support to the county commission. Her job duties include preparing commission meeting agendas, drafting outgoing correspondence, directing the county development authority, guiding courthouse maintenance, updating the county website, and assisting in grant applications. The Requester is considering running for city council in a city located in the same county where she is employed by the County Commission.

The Ethics Commission held that for purposes of the Ethics Act, a county commission employee may be a candidate for city council. The Ethics Commission further found that a county commission employee may simultaneously serve as a city council member in the same county.

The Ethics Commission noted that the Requester should consult with her agency's attorney to ensure that no personnel policies of her agency, state laws, or federal laws restrict her political activities. The Ethics Commission also noted that the Ethics Act prohibits public employees from performing campaign activities during public work hours and prohibits the use of public resources to subsidize an election campaign. Finally, the Ethics Commission noted that the Requester must perform her city council duties on her own time and not during her county work hours unless she takes annual leave or unpaid leave.

[Advisory Opinion 2022-03](#) - City Council Member

Categories: Nepotism; Private Gain; Voting

A prospective candidate for **City Council** asks whether she may serve as a council member if her son is or becomes a Municipal Judge for the same city. They do not reside together and are not financially dependent upon one another.

The Ethics Commission held that W. Va. Code § 6B-2-5(d) does not prohibit them from serving in the respective positions because: (a) the city council member would not have a direct financial interest in the son's position as municipal judge because he does not meet the definition of immediate family; and (b) employment in a public position is exempted from the restrictions of W. Va. Code § 6B-2-5(d).

As the son meets the broader definition of relative pursuant to W. Va. Code § 6B-1-3(m), the council member must comply with the nepotism rules, including recusing herself from any discussions or votes relating to the employment or working conditions of her son as required by W. Va. Code §§ 6B-2-5(b) and (j) and W. Va. Code R. § 158-6-3. Further, she may not directly supervise her son or show favoritism to him.

[Advisory Opinion 2022-04](#) - County Commissioner

Categories: Contracts; Voting; W. Va. Code § 61-10-15

A **County Commissioner** asked whether he may vote on a tax incremental financing (TIF) request from a corporation that has financial ties to his employer.

A County Commissioner is privately employed by a solely-owned limited liability company (LLC), but he is not an officer or director of the LLC. The LLC has a contract with a resort to provide security services for it. The County Commissioner is not an employee of the resort, but is working under the LLC's contract as the head of security at the resort. He is not an owner, director, or officer of the resort.

A corporation is asking the County Commission to approve a tax incremental financing (TIF) district to facilitate residential and commercial development of property it owns in the County. The corporation is believed to be solely owned. The County Commissioner

is not an employee, director, or officer of the corporation. The resort, at which he serves as head of security through the LLC, is situated outside of the proposed TIF district.

If the TIF is approved and created, then the corporation will be subject to the terms of the TIF agreement with the County as a condition of receiving the TIF revenue for development within the TIF district. The TIF financing would not be used for the resort.

To the best of the County Commissioner's knowledge, the LLC that employs him is not the parent company or a subsidiary of the corporation that is requesting the TIF. However, the corporation's owner has financial ties to the owner of the LLC that employs the County Commissioner and to the resort. Specifically, the owner of the corporation solely owns or has an ownership interest in the resort through other companies. Furthermore, the County Commissioner believes that the owner of the corporation also owns another business that employs the LLC owner.

The West Virginia Tax Increment Financing Act ("TIF Act"), at W. Va. Code §§ 7-11B-1 through 7-11B-30, authorizes county commissions and larger municipalities "to raise revenue to finance capital improvements and facilities that are designed to encourage economic growth and development in geographic areas characterized by high levels of unemployment, stagnant employment, slow income growth, contaminated property or inadequate infrastructure." PROPERTY TAX INCREMENT FINANCING IN WEST VIRGINIA, A GUIDE FOR COUNTIES AND CLASS I AND II MUNICIPALITIES, W. Va. Development Office, West Virginia Department of Tax and Revenue, 4 (2003). The revenue generated by a TIF is used by a county or municipality to pay for approved projects in the district. Examples of projects include building access roads and installing sewer or water lines. A county or municipality may use the TIF funds to either directly pay for projects or to make bond payments if bonds are issued by the county or taxing body to finance the projects in the TIF district. A developer must comply with the terms of the TIF agreement as a condition of the TIF funds being expended for improvements in the TIF district. A developer for property in a TIF district benefits by virtue of public infrastructure projects.

The Ethics Commission reaffirmed a prior opinion, Advisory Opinion 2003-15, and held that a TIF creates a public contract. The Commission analyzed the public contract restrictions and concluded that the County Commissioner did not have a financial interest in the TIF contract because he:

- (1) Does not own property in the TIF district;
- (2) Is not a party to the TIF contract;
- (3) Has no ownership interest in either the LLC which employs him or the corporation requesting the TIF district, and
- (4) Is not employed by the corporation applying for the TIF district.

The Ethics Commission held, therefore, that the County Commissioner does not have a prohibited financial interest in a TIF district, for purposes of the Ethics Act, W. Va. Code § 6B-2-5(d) Act, or W. Va. Code § 61-10-15, by virtue of his employment by an LLC as the security officer at a resort.

The Ethics Commission next analyzed the voting restrictions in the Ethics Act, at W. Va. Code § 6B-2-5(j). The term “associated” with a business for purposes of applying the voting restrictions in the Act, is a business in which “the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.” W. Va. Code § 6B-2-5(j). In applying this definition of “associated,” the Ethics Commission held that the County Commissioner is not associated with the corporation seeking approval of a TIF district and that he may, therefore, vote on the TIF application.

[Advisory Opinion 2022-05](#) - County Commissioner

Categories: Conflict of interest; W. Va. Code § 61-10-15

A **potential candidate for County Commission** asked whether he may continue to serve as a municipal judge in the same county if elected.

The Requester serves as a Municipal Judge for a Town. The Town Council appoints the Municipal Judge. The Requester may become a candidate for the County Commission in the same county. The County does not provide any funding to the Town.

In Advisory Opinion 1990-130, the Ethics Commission held that it would not violate the Ethics Act for a county commissioner to be employed as a water treatment operator for a city in the same county in which he served as a county commissioner. The Ethics Commission held that, pursuant to the plain language in the Ethics Act and its prior Opinions, the Ethics Act does not prohibit a county commissioner from being employed as a municipal judge in the same county.

The Commission next analyzed W. Va. Code § 61-10-15, which prohibits county commissioners and other county officials from having an interest in contracts, including employment contracts, over which they exercise voice, influence, or control. The Commission has consistently stated in past Advisory Opinions that two factors to consider when determining 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 that employ a public official, and/or 2) appropriations of funding to such boards or commissions. Advisory Opinion 2018-05. The Commission applied both factors.

The Ethics Commission held that the County Commission does not exercise voice, influence, or control over the Town's employment contracts because the County Commission does not appoint Town officials or employees or appropriate money to the Town. Therefore, pursuant to the Ethics Act and W. Va. Code § 61-10-15(a), the Requester may serve as a county commissioner and municipal judge in the same county.

[Advisory Opinion 2022-06](#) - County Commission

Categories: Private Gain; Conflict of Interest

A **County Commission** asked whether a County Board of Health (BOH) member, specifically the President, may also serve on the board of a nonprofit hospital/health system when the only other county health system is not represented on the Board.

The County Commission appointed a local business person to the BOH. He is currently serving as the President of the BOH. He is not an employee, contractor, or other compensated agent of the BOH.

The BOH president was recently appointed, in his private capacity, to serve on the board of directors of a local nonprofit hospital/health system. The BOH President does not receive compensation from the hospital for serving on its board. He is not an employee, contractor, or other compensated agent of the hospital. Therefore, the board member has no personal financial relationship with the hospital/health system or the BOH.

There is one other hospital/health system in the County. A member of this other hospital/health system is not represented on the BOH.

The Commission stated that “[t]he Ethics Act does not generally prescribe who is eligible to serve on a public body or subcommittee [T]he Commission has no authority to make this determination”

The Ethics Commission held that the Ethics Act does not prohibit a member of the Board of Health, including the President, from being an unpaid member of the board of directors of a nonprofit hospital/health system when the only other health system in the County is not represented on the Board of Health.

[Advisory Opinion 2022-07](#) - Board of Education Member

Categories: W. Va. Code § 61-10-15

A **County Board of Education Member**, who is a physician and provides medical services through her private medical practice, asked whether she may perform mandatory physical examinations for school bus drivers in the County.

The BOE employs around 20 bus drivers at any given time. The BOE does not have a contract with any particular medical examiner to perform the physicals. The bus drivers instead choose a qualified medical provider to perform the physical examination, and the BOE pays the medical provider directly or reimburses the employee for the cost of the physical. The BOE votes to approve all monthly invoices to all vendors, including medical providers, as one agenda item.

In [Advisory Opinion 2010-15](#), the Commission held that a BOE member may not be paid as a sports official for a county school, finding that a BOE member has voice, influence, or control over all school contracts that are paid for with county funds even if the school and not the BOE selects the officials. The Ethics Commission has also found that county officials have voice, influence, or control over contracts in other situations in which the public official's board does not directly select the contractor or subcontractor who will be paid with county funds. See [Advisory Opinion 2017-02](#).

Based on the plain language in W. Va. Code § 61-10-15 and prior Advisory Opinions, the Ethics Commission found that the BOE exercises voice, influence, or control over the payments and contracts for school bus driver physical examinations. The Ethics Commission holds, therefore, that a County Board of Education member, who is a physician and provides medical services through her private medical practice, may not be paid by the BOE to perform mandatory physical examinations for school bus drivers in the County.

The Requester may continue to perform physical examinations of bus drivers employed in another county because the BOE on which she serves does not pay for those examinations. The Requester also asked whether she may continue to perform physical examinations for her County BOE's bus drivers if she did them for free. The Ethics Commission finds that, consistent with its holding in [Advisory Opinion 2010-15](#), the Requester may perform free physical examinations for bus drivers.

[Advisory Opinion 2022-08](#) - County Council

Categories: Nepotism; Voting

A **County Council** asked whether a deputy sheriff's father may serve on the deputy civil service commission and, if so, what voting restrictions apply.

Counties must have a civil service commission for deputy sheriffs. W. Va. Code § 7-14-3. The Legislature has established the appointment process and eligibility requirements for deputy civil service commissioners. *Id.* The duties of deputy civil service commissions include prescribing and enforcing rules and regulations relating to the civil service system, certifying eligibility lists for deputy sheriff candidates, and conducting investigations. W. Va. Code §§ 7-14-6 and 7-14-9. If a sheriff discharges, suspends, or reduces the rank or pay of a deputy, then the deputy has the right to demand a hearing before the deputy civil service commission. W. Va. Code § 7-14-17.

In [Advisory Opinion 2017-22](#), the Ethics Commission held that a part-time appointed board member may serve on a board or subcommittee even though his spouse represented clients before the board and subcommittee. The Commission reasoned that “[t]he Ethics Act does not prescribe who is eligible to serve on a public body or subcommittee.” *Id.*; see also [Advisory Opinion 2019-03](#).

The nepotism restrictions do not bar a public official's relative from being employed with a public agency so long as the nepotism rules are followed. The Ethics Commission held that the Ethics Act, including its nepotism provision and Legislative Rule, do not prescribe who is eligible to serve on a deputy civil service commission. Therefore, the Ethics Commission held that the father of a deputy sheriff may serve on the deputy civil service commission. He must recuse himself if a matter uniquely affects the employment or working conditions of his son, but he may vote if his son is affected in the same manner as five or more similarly situated deputies.

Based upon the holding in this Opinion and the holding in [Advisory Opinion 2017-22](#), the Commission overruled its holding in [Advisory Opinion 2013-37](#), in which the Ethics Commission held that the Ethics Act prohibited a sheriff's department employee from serving on a deputy civil service board.

[Advisory Opinion 2022-09](#) - County Commission Candidate

Categories: Contracts; Voting; W. Va. Code § 61-10-15

A **County Commission candidate** asked whether he may continue being employed as the operations manager for a nonprofit county rescue squad if he is elected to the County Commission.

The Requester is the Chief of Operations and the Corporate Director for a County Rescue Squad ("Rescue Squad"). The Rescue Squad is a nonprofit corporation that provides medical transports for citizens.

The Requester states that the Rescue Squad does not receive any county funding. Hence, the county does not appropriate money to the Rescue Squad. The Rescue Squad does not contract with any county agencies. Furthermore, the Rescue Squad does not receive any state, federal, or taxpayer funds and does not employ any county, state, or federal employees.

The Rescue Squad's Board of Directors consists of nine members. Six members are elected by employees of the Rescue Squad; one member is appointed by a hospital/medical facility's board of directors; one member is appointed by the County Commission, and one member is appointed by a municipality which is also the county seat. The Rescue Squad's Board of Directors has a nomination committee which presents a slate of three county residents to the county commission which then selects one of the persons to serve as the County representative on the Rescue Squad's Board. The same slate process is used for the appointment of the municipal representative.

The Ethics Act does not prescribe who is eligible to serve on a public body, but a person who is elected to public office must comply with the restrictions in the law governing interests in public contracts. [Advisory Opinion 2017-22](#) and [Advisory Opinion 2022-08](#).

Both the Ethics Act and W. Va. Code § 61-10-15, a criminal misdemeanor statute that applies to certain county officials and employees, including county commissioners, prohibit the Requester from being a party to, or having a financial interest in, a public contract over which his public position gives him varying degrees of control. The Ethics Commission has consistently stated in past Advisory Opinions, e.g., [Advisory Opinion 2018-05](#), 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.

The County Commission does not appropriate money to the Rescue Squad or contract with it. Therefore, the only relevant factor to consider is whether the County Commission's power to appoint one of the Rescue Squad's nine board members constitutes the exercise of voice, influence, or control over the Rescue Squad's employment contracts.

In Advisory Opinion 1999-26, the Commission held that a Board of Education (BOE) member *was not prohibited* from contracting with a parks commission where the BOE appointed only three of nine of the members of the parks commission board and the BOE's financial contribution was limited. In [Advisory Opinion 2021-10](#), the Ethics Commission held that the power of a county commission to appoint one of 16 board members to a convention and visitor's bureau (CVB) was insufficient to give a county official voice, influence, or control over an entity's contracts. (The Ethics Commission held in [Advisory Opinion 2021-10](#), however, that a county commissioner may not be employed by a CVB based upon the financial interrelationship between the CVB and county commission).

In the instant case, the County Commission appoints only one of the Rescue Squad's nine members. The Commission found that the County's appointment power is insufficient to constitute the exercise of voice, influence, or control over the Rescue Squad's employment contracts so as to prohibit the Requester's employment with the Rescue Squad.

[Advisory Opinion 2022-10](#) - County Assessor

Categories: Gifts

A **County Assessor** asked whether he may accept an "honorarium" from a professional Association to cover travel-related expenses for being an instructor or attendee at its conference.

The Ethics Act contains a provision addressing when it is acceptable for a public employee or official to accept an honorarium. W. Va. Code § 6B-2-5(c)(3). (For the restrictions on accepting honorariums, see W. Va. Code R. § 158-7-2.2.) "Honorarium" means payment given in recognition of published works, appearances, speeches and

presentations which is not intended as consideration for the value of such services.” W. Va. Code R. § 158-7-2.1 The definition of “honorarium” in Black Law’s dictionary is: 1. A payment of money or anything else of value made to a person for services rendered for which fees cannot legally be or are not traditionally paid. 2. A voluntary reward for that for which no remuneration could be collected by law; a voluntary donation in consideration of services that admit of no compensation in money *Honorarium*, Black’s Law Dictionary (11th ed. 2019).

In Advisory Opinion 1990-62, the Commission found that \$250 paid to a Delegate from an Association was payment issued for his administrative work pursuant to a “quasi-employment contract” and not an honorarium. The Commission, in Advisory Opinion 2022-10, stated, “Likewise here, the payment is not an honorarium because the Requester enters into a legally binding contract for payment for work as an independent contractor. The instructors must apply for the work through a rigorous application process and teach a course to receive the money. The payment represents the full value of his services.”

The Requester was not permitted to accept compensation for his employment services from the Association under W. Va. Code § 6B-2-5(h)(1). He was permitted, however, to accept funds from the Association and use them to cover his travel expenses because the conference would increase his job knowledge and skill, which would significantly benefit the Assessor’s Office and the public. See Advisory Opinions 1998-18, [2004-28](#), and [2011-13](#).

The County Assessor’s Office, in the alternative, could pay these travel expenses as such payment would be a justified public expense.

[Advisory Opinion 2022-11](#) - State Agency

Categories: Endorsement

A **State Agency** asked whether posting a list of restaurants suggested by employees on its employee wellness website is permissible or a prohibited endorsement.

A State Agency has a wellness program for its employees. As part of the program, the Agency has created an employee wellness resource center website which is intended as a resource for its employees. The website is an interagency website, and it is not accessible through the State Agency’s public website. The Requester states that the purpose of the website is to “provide information and resources on nutrition, healthy eating, physical health, exercise, stress management, mental health, and more.”

The Agency’s wellness coordinator recently sent a survey to the Agency’s employees asking them to give suggestions for restaurants that serve healthy food in their part of the state. The Agency then posted the names of the restaurants, with a brief description about them, on its wellness website under a heading entitled: “Employee Suggested Restaurants.” There are no links to the restaurants.

The Ethics Commission has held that W. Va. Code § 6B-2-5(b)(1), which prohibits the use of office for the private gain of public servants or others, restricts public servants from promoting or endorsing commercial products and services unless there is an overriding public benefit. In examining wellness programs, the Commission has consistently held that agency-authorized wellness activities do not normally violate the private gain provisions in the Act. For example, in [Advisory Opinion 2017-08](#), the Commission held that a state agency charged with providing health care benefits to public employees may contract with a private company to provide a wellness program that offers financial rewards to public employees. While neither [Advisory Opinion 2017-08](#) or the opinions cited therein expressly addressed endorsements, the restrictions on endorsements arise from the private gain provisions in the Act. The Commission found that its prior wellness opinions are, therefore, instructive in analyzing the issue before it.

The Ethics Commission found that allowing employees to share their favorite healthy restaurants in the context of an employee wellness program has an overriding public benefit because it relates to promoting employee wellness and morale. The Ethics Commission found, accordingly, that allowing public employees and public officials to share information about their favorite restaurants on an agency's wellness website is not an improper endorsement under the Ethics Act.

[Advisory Opinion 2022-12](#) - Former Deputy Secretary of a State Department

Categories: Post-employment; Revolving Door

A **former Deputy Secretary** of a state department asked whether he is subject to any post-employment restrictions in the Ethics Act, including the revolving door provisions.

The Commission concluded that the former Deputy was not prohibited from seeking employment in the private and public sectors, under W. Va. Code § 6B-2-5(h), because the prohibition does not apply to former employees or to seeking work in the public sector.

The former Deputy was not prohibited from registering as a lobbyist - without waiting one year - under § 6B-3-2(e), because in his position he was not “the head of any state department or agency.”

The former Deputy was not prohibited from appearing before his former agency in a representative capacity under § 6B-2-5(g), because he was not a “public official,” as his position was not created by law and did not require an oath of office.

Finally, the former Deputy secretary is subject to the limitations in § 6B-2-5(f), regarding matters in which he was substantially involved. For example, he may not represent a person in a license or permit application proceeding if the proceeding is a continuation of a prior proceeding in which he substantially participated as an agency employee.

[Advisory Opinion 2022-13](#) - State Board's Executive Director

Categories: Financial Disclosure

A **State Board's Executive Director** asked whether she and the Board's members must report on their Financial Disclosure Statements that a foundation is the source of a gift when the foundation reimburses their attendance and travel expenses for a conference hosted by the foundation.

A non-profit foundation ("Foundation") hosts training conferences and reimburses the Executive Director and the Board members' attendance fees, lodging, meals, and other travel expenses for attending these conferences.

The State Board has authority over the licensure and certification procedures and requirements, including the development of examinations, for practitioners in a licensed profession. The Executive Director states that the training conferences assist her and the Board members in obtaining and enhancing skills and knowledge relating to the duties and mission of the State Board.

The United States Congress has authorized the Foundation to be the source for establishing the standards and qualifications related to the profession over which the State Board has oversight. The Foundation also provides guidance on recognized methods and techniques related to the profession. The Foundation has a qualifications board that annually updates and revises the national standards for education and experience required for the licensure and certification of these professionals.

No state regulatory agency pays dues to the Foundation. According to the Foundation's website, "[t]he Foundation is not a membership organization but rather is composed of other organizations. . . . [C]lose to one hundred organizations, corporations and government agencies are affiliated with the Foundation." The Foundation's advisory council consists of 60 non-profit organizations and government agencies, including a West Virginia professional organization whose profession is regulated by the State Board. Neither the Foundation nor the West Virginia professional organization has lobbyists registered in the State of West Virginia.

The Board members and the Requester are required to file financial disclosure statements pursuant to W. Va. Code § 6B-2-6(a)(2) and (3), respectively. The Foundation must be disclosed on the financial disclosure statements as the source of a gift over \$100 if the Foundation is "a person having a direct and immediate interest in a governmental activity" over which the Requester and/or the Board members have control. W. Va. Code § 6B-2-7(a)(10). The interest the Foundation has in a governmental activity over which the Requester or Board members has control, if any, is not immediate and has no direct impact on the same. Therefore, the Ethics Commission held that the Executive Director and the Board members do not have to disclose the Foundation as the source of a gift of the attendance, lodging, meals, and

travel expenses paid for by the Foundation for attending the Foundation's training conference.

[Advisory Opinion 2022-14](#) - General Counsel State Board

Categories: Contracts

The **General Counsel** for a State Board asked whether she may assist the Board in selecting a lawyer or law firm to provide outside legal counsel services when the Requester's spouse is a member of a law firm that may apply to provide outside legal services.

The Requester is an employee of the State Board. The State Board is governed by a Board of Trustees.

The Requester's title is General Counsel, and the Requester is the only in-house attorney at the State Board. The Requester intends to retire at the end of the fiscal year. The State Board does not anticipate hiring an employee to replace the Requester. Instead, the State Board plans on contracting with a law firm (or lawyer) to provide outside legal counsel services.

In order to seek these services, the State Board has sent out a Request for Information ("RFI" or "bid") to approximately 17 law firms. The RFI has been placed on the State Board's website and sent to the West Virginia Bar Association for distribution.

The Board of Trustees Legal & Legislative Committee ("Committee"), which consists of Board of Trustees members, will direct the RFI process with assistance from the State Board's Executive Director, Chief Financial Officer, and the Requester ("Executive Staff"). The Executive Staff will support and provide input to the Committee throughout all stages of the RFI process. The Committee will identify a firm or firms to retain from the responses received from the RFI, and the Committee, under delegated authority from the Board of Trustees, will make the final decisions as to the firm or firms to be hired.

The Committee will review and score all responses. If the Committee receives a substantial number of responses to the RFI, the Committee may direct its Executive Staff to initially screen the responses based upon criteria determined by the Committee. In this scenario, the Committee would still receive all responses. Distribution of the RFI, physical receipt of responses, maintenance of records, and other administrative work to be done on the RFI will be performed by the State Board's administrative assistants, not its Executive Staff.

The Requester's spouse is a member and owner of a law firm which was selected to receive the RFI. The firm has over 100 attorneys and offices in several states. The Requester's spouse holds no other title or position in the firm other than Member. His ownership interest is less than five percent. The Requester's spouse will also be

retiring and intends to withdraw as an owner at the end of 2022. After retirement, he will work for the firm as a self-employed, independent contractor and will begin to receive a payout from the law firm based upon his equity capital account accruals that he paid into over time. Her spouse's payout will begin in 2023 and continue for two years. The firm also has discretion to extend the length of the payout.

The Requester states that if her spouse's firm is awarded the contract, her spouse can arrange with the firm that over the last months of his employment, none of his ownership earnings would be received from fees paid by the State Board to his firm. Finally, the Requester states that her spouse would not perform any services for the State Board if his firm is awarded the contract because his practice area(s) does not coincide with the legal services sought by the State Board through the RFI.

Prohibited interest in public contract

Pursuant to the Ethics Act, at W. Va. Code § 6B-2-5(d)(1), a public official or public employee may not have more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control. This prohibition against private interests in public contracts extends to public servants' spouses and businesses in which either spouse has an ownership interest of more than five percent, or with which is otherwise "associated." In other words, it violates the Ethics Act for public servants or their spouses to have an ownership interest of more than five percent in a business which is a party to a public contract over which the public servant may have the authority to award or control, even if the public servant does not participate in awarding the contract.

In order to be "associated" with a business, the Requester or her spouse would need to be a "director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class." W. Va. Code R. § 158-8-4. The Requester's spouse is a member of the law firm: he is not a director or officer of the law firm. The Requester's spouse's ownership interest is less than five percent in the law firm. Therefore, neither the Requester nor her spouse is "associated" with the firm, and the State Board may contract with a law firm.

Participation in making the contract

W. Va. Code § 6B-2-5(d)(3) states:

If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

This subdivision was enacted by the West Virginia Legislature in 2008. Its application to the instant situation is a matter of first impression for the Commission.

The restriction does not define what constitutes an “interest” for purposes of requiring a public official or public employee to remove him or herself from the contract award process. The Commission finds, based upon the totality of the circumstances, that the Requester has an interest requiring her removal from the contract award process. The law firm has a legal obligation to pay both its employees and members. Even if a member who has an ownership interest in a law firm does not derive direct benefits from the contract, the member/owner still has a financial interest in the financial stability of the law firm. Moreover, the spouse, as an owner, has a financial interest arising from the law firm’s legal obligation to compensate him under the terms of the payout agreement.

The law firm has an ongoing financial relationship with an outgoing owner under a payout agreement until the law firm pays the money owed to the outgoing owner in full. This financial obligation, hence, continues even after a member withdraws as an ownership member. The Act also states that a financial interest in a public contract exists if a public employee or public official or his or her spouse is a creditor of a business awarded a public contract. W. Va. Code § 6B-2-5(d)(2) and W. Va. Code R. § 158-8-3.1.b. The Requester’s spouse will receive a payout from the law firm based upon his equity capital account accruals: this fact appears to make the creditor restrictions applicable to the situation presented.

The Ethics Commission held that the Requester may not participate in selecting a law firm to provide legal services to her State Board employer if her spouse’s law firm submits a bid because she has an interest in the contract for purposes of the restrictions in W. Va. Code § 6B-2-5(d)(3).

[Advisory Opinion 2022-15](#) - County Board of Education Member-Elect

Categories: Contracts; W. Va. Code § 61-10-15 County Officers (Criminal Provision)

A **County Board of Education Member-Elect** asked whether he may continue to serve as an unpaid volunteer coach for a public school when he begins his term on the board of education in the same county.

The Requester has served as an unpaid volunteer coach for an athletic team of a public school. He has been elected to the board of education in the same county. of the board of education to which he has been elected. He prefers to continue as an unpaid volunteer at the school while serving on the county board of education but inquires as to whether he may do so..

In conformity with prior Advisory Opinions which are reaffirmed, the Ethics Commission finds that service as an unpaid volunteer coach at a school does not constitute

possession of a pecuniary interest in a contract over which the county board of education member has a voice influence and control. See [Advisory Opinion 2000-18](#), [Advisory Opinion 2005-03](#), and [Advisory Opinion 2005-18](#). This Advisory opinion incorporates by reference School Board Advisory Opinion 2022-01.

[Advisory Opinion 2022-16](#) was changed to [Contract Exemption 2022-03](#).

[Advisory Opinion 2022-17](#) - County Board of Education

Categories: Private Gain

A **County Board of Education (“BOE”) Member** asked several questions relating to two proposed state constitutional amendments affecting BOEs that will be on the ballot in the general election. The proposed “Education Accountability Amendment” gives the state Legislature greater authority over the rules and policies of the State Board of Education. This amendment does not directly establish or impact BOE employees’ salaries. The proposed “Property Tax Modernization Amendment” gives the state Legislature authority to exempt personal property (machinery, equipment, and inventory) used for business activities and personal motor vehicle property taxes from ad valorem property taxes. A significant portion of the funding upon which county BOEs depend for operation of the school system is derived from such taxes. This constitutional amendment could impact the salaries of school personnel or the availability of jobs in the school systems.

The Ethics Commission made the following rulings:

1. BOE members and superintendents may advocate for the passage or defeat of proposed state constitutional amendments during a public board of education meeting.
2. BOE members may, in their official or private capacities, advocate for the passage or defeat of proposed state constitutional amendments.
3. Superintendents may, in their official or private capacities, advocate for the passage or defeat of proposed state constitutional amendments.
4. BOEs may use public resources to form, join or participate in an organization to advocate for the passage or defeat of the “Education Accountability Amendment” because it does not directly affect the salaries of BOE employees. BOEs may not use public resources to form, join or participate in an organization to advocate for the passage or defeat of the “Property Tax Modernization Amendment” because this Amendment implicates the private gain restrictions in the Ethics Act because it potentially impacts the salaries of BOE employees.

5. BOEs may use public funds to educate the public about either the “Education Accountability Amendment” or the “Property Tax Modernization Amendment.”

6. BOEs may use public resources to advocate for the passage or defeat of the “Education Accountability Amendment” because it does not directly affect the salaries of BOE employees. BOEs may not use public resources to advocate for the passage or defeat of the “Property Tax Modernization Amendment” because this Amendment implicates the private gain restrictions in the Ethics Act because it potentially impacts the salaries of BOE employees.

[Advisory Opinion 2022-18](#) - County Board of Education

Categories: Private Gain; Voting

A **County Board of Education (BOE)** asked whether the BOE may appoint one of its members to the County Public Library Board and whether the BOE Member may vote on financial matters affecting the County Public Library if she serves on that board.

A County Public Library (“Public Library”) was created by a Special Act (“Act”) of the West Virginia Legislature which only created this specific public library. The Act provides that the Public Library shall be supported by the County Board of Education (“BOE”) and the County Commission. The Act states that the Public Library Board shall consist of five members who shall serve without compensation.

The Act further requires the BOE and County Commission to each appoint two members and a city, situated in the same County, to appoint one member. Moreover, the Act expressly subjects the Public Library Director to all duties imposed by W. Va. Code §§ 10-1-6, 7, 8, 9, 10, and 11. These Code sections prescribe the authority and duties of the Public Library Boards.

The Ethics Commission held that the BOE may appoint one of its members to serve on the County Public Library Board because it is an uncompensated position. The Ethics Commission further held that a BOE member may vote on matters affecting a public library board.

[Advisory Opinion 2022-19](#) - State Board Member

Category: Voting and Recusal

A **State Board Member** who has an ownership interest in for-profit educational institutions asked whether he may vote to approve and license programs at other educational institutions when his educational institutions offer the same degree program.

The State Board's duties include approving and licensing associate degree and baccalaureate programs provided by educational institutions to persons in the profession regulated by the State Board. The Requester has an ownership interest that is greater than 10% in for-profit educational institutions that provide seven associate degree programs in the regulated profession at various locations throughout the state. The State Board approves and licenses the program at the Requester's educational institutions, and the Requester states that he will recuse himself from any discussion or vote concerning the approval or licensure of such programs at his institutions.

There are twenty-four (24) educational institutions in the state that offer associate degree and/or baccalaureate programs that are approved and licensed by the State Board on which the Requester serves. Sixteen (16) of these institutions offer associate degree programs similar to those offered by Requestor's institution. The Requester states that only his educational institutions and one other educational institution offer associate degree programs in more than a single location or within a single region i.e., at locations roughly sixty-miles or less apart.

The Ethics Commission determined that the Requestor's greater than 10% ownership of educational institutions that operated in seven locations throughout the state created a direct financial interest for Requestor in the program approval and licensure of similar programs offered by other educational institutions. The Ethics Commission held that W. Va. Code § 6B-2-5(j) and W. Va. Code § 6B-2-5(k) prohibited the Requester from participating in or voting on licensing and approving programs at educational institutions that have or seek to have the same program or programs as the Requester's educational institutions. He must recuse himself from the discussions and votes. Further, The Ethics Commission partially overruled Advisory Opinion 2013-30. That opinion held, in part, that a member of a state commission that regulated live dog and horse racing could not serve on the state commission because he was the owner or part-owner of a racehorse and, therefore, the Ethics Act, at W. Va. Code § 6B-2-5(k), would prohibit him from obtaining a license for himself or horses he owned from the state commission. The Ethics Commission found this holding was wrong because W. Va. Code § 6B-2-5(k) only prohibits board members from participating in certain matters relating to licensing, e.g., matters that affect them uniquely, but does not bar them from being licensed by the board on which they serve.

[Advisory Opinion 2022-20](#) - Public Park

Category: Gifts

A **Public Park** asked whether its employees may accept gifts valued over \$25 per calendar year from the Park's Foundation.

A Supervisor of a Public Park ("Park") was approached by the Treasurer of the Park's Foundation ("Foundation") with an offer to donate \$50 to each Park employee as a Christmas gift. The Park currently has ten employees. The Park is not a member of

and provides no funds to the Foundation. The Park's employees do not solicit donations for the Foundation.

The Act and related Legislative Rule, W. Va. Code § 6B-2-5(c)(1) and W. Va. Code R. §§ 158-7-1 through 158-7-9, prohibit the Park employees from accepting more than a nominal gift, i.e., \$25 in value, from the Park's Foundation. The restrictions on gifts to public servants apply only if the gift giver is a lobbyist or any person whom the official or employee knows or has reason to know:

1. Is doing or seeking to do business of any kind with his or her agency,
2. Is engaged in activities which are regulated or controlled by his or her agency, or
3. Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties

The Foundation does not fall in category one (1) above because the Foundation is not doing or seeking to do business with the Park. W. Va. Code § 6B-2-5(c)(1)(B). This finding is consistent with [Advisory Opinion 2015-18](#), in which the Commission permitted a state health employee to accept a \$2,000 award from a non-profit health association. The Commission found that the association was not doing or seeking to do business with the agency because the state agency was not a member of the association and therefore public funds were not used to pay membership dues. The Commission also found that the association was not seeking to do business with the state agency by merely making its memberships available on its website.

As for category (2), the Foundation's mission is to provide assistance to the Park, and its members are not subject to Park rules or regulations except when they are using the Park like any other member of the public. Based on prior Opinions, the Commission finds that the Park does not regulate the Park's Foundation.

Last, as for category (3), the Foundation is not a person with financial interests which may be substantially and materially affected by the performance or non performance of the Park employees or administrators' official duties.

The Ethics Commission held that the Public Park employees may accept gifts valued at over \$25 per calendar year from the Park's Foundation because the Foundation is not an interested person of the Public Park for purposes of the gift restrictions in the Ethics Act and related Legislative Rule.

[Advisory Opinion 2022-21](#) - State Legislator

Category: Contracts; Employment Restrictions

A **State Legislator** asked whether he may serve as legal counsel, through a law firm that employs him, to a county clerk's office located within his legislative district. The Requester states that his role would be to advise the office on general legal matters within the jurisdiction of the county clerk's official duties.

The Requester is employed by a law firm. He does not hold an ownership interest in the firm. The county clerk's office will be engaging the law firm to provide the requested legal services, and the Requester will undertake the primary responsibility for this representation with assistance from other lawyers in the law firm as needed.

In general, the Ethics Act does not prohibit state legislators from employment by or contracting with any public agency or private entities in the state. The fact that the Requester's employer is contracting with a county office within his legislative district does not change the analysis and conclusions in prior Advisory Opinions.

Furthermore, the public contract restrictions in the Ethics Act, at W. Va. Code § 6B-2-5(d)(1), do not prohibit the Requester from contracting with a county clerk's office, or any county office, because the Requester, through his legislative position, does not exercise authority or control over county contracts. Even if he did, an exception to the public contract restrictions in the Ethics Act allows members of the Legislature to enter into a contract with any governmental body when he or she does not participate in deciding, reviewing, or evaluating the contract.

Finally, W. Va. Code § 6B-2-5(h)(1), which prohibits public officials from seeking employment from regulated persons and vendors, does not apply here. W. Va. Code § 6B-2-5(h)(1) prohibits only full-time public officials from seeking employment with regulated persons and vendors. Legislators are part-time officials. This provision also does not prohibit public officials from seeking employment, being employed, or contracting with other governmental agencies.

The Ethics Commission held that the Ethics Act does not prohibit a State Legislator from being employed by or contracting with, either directly or through a law firm that employs him, a county clerk's office which is located within the Legislator's legislative district.

Open Meetings Advisory Opinions (OMAO) 2022

[Open Meetings Advisory Opinion 2022-01](#) - Harrison County Commission

Categories: Executive Session

The **Harrison County Commission** asked whether information discussed in executive session is confidential.

Governing bodies, including county commissions, may enter into an executive session which is closed to the public during a meeting for any of the reasons authorized by the West Virginia Open Governmental Meetings Act, at W. Va. Code § 6-9A-4. The Requester asks if information presented or discussed during executive sessions is confidential and the ramifications, if any, for disclosing such information.

“Executive session” is defined in the Open Governmental Proceedings Act (“Open Meetings Act” or “Act”) as “any meeting or part of a meeting of a governing body which is closed to the public.” W. Va. Code § 6-9A-2(3). Two requirements must be met before a governing body may hold an executive session.

First, an executive session may only be held for the reasons listed in the Open Meetings Act. See W. Va. Code § 6-9A-4(b) (listing actions for which an executive session may be held). For example, a governing body may hold an executive session to consider the employment or discharge of a public employee. W. Va. Code § 6-9A-4(b)(2)(A).

Second, a majority of the members of the governing body present must authorize the holding of an executive session by an affirmative vote. W. Va. Code § 6-9A-4(b). The decision to hold an executive session is, therefore, discretionary.

In reviewing the plain language of the Act, the Ethics Commission’s Committee on Open Governmental Meetings held that the Act does not make executive session communications confidential. This conclusion is supported by and consistent with the West Virginia Supreme Court’s approach to the executive session privilege in *State ex rel. Marshall County Commission v. Carter*, 689 S.E.2d 796, 804 (W. Va. 2010).

The Committee found that if the Legislature intended for all information presented and discussed during executive sessions to remain confidential, then the Legislature would have expressly included this restriction in the Open Meetings Act as other states have done.

Therefore, the Committee held that the Open Meetings Act does not make information discussed during executive sessions confidential because executive sessions are discretionary and the Act does not state that executive session communications are confidential. Other rules and laws, however, may create a duty of confidentiality. The

ruling does not preclude a governing body from adopting a rule which provides that information discussed during a legally authorized executive session is confidential. This holding simply provides that the Open Meetings Act does not inherently create that confidentiality.

[Open Meetings Advisory Opinion 2022-02](#) - Task Force

Categories: Agency, Agenda, and Notice

The **West Virginia Tobacco Use Prevention and Cessation Task Force** asked whether it is subject to the Open Governmental Proceedings Act and, if so, what the requirements are for posting its meetings.

The West Virginia Tobacco Use Prevention and Cessation Task Force (“Task Force”) was created by the Legislature “for the purpose of recommending and monitoring the establishment and management of programs that are found to be effective in the reduction of tobacco, tobacco products, alternative nicotine products, and vapor products use by all state citizens” W. Va. Code § 16-9G-1. The Task Force is statutorily authorized to monitor programs administered by the Division of Tobacco Prevention. W. Va. Code § 16-9G-1(d).

The Task Force has twelve members. The enabling statute requires the Commissioner of the Bureau for Public Health or his or her designee to serve as the chair. The other board members are the Superintendent of the Department of Education or his or her designee, and ten members appointed by the Governor who have the statutorily prescribed qualifications. W. Va. Code § 16-9G-1(b). The Task Force must meet quarterly. W. Va. Code § 16-9G-1(c).

The Committee held that the Task Force is a governing body subject to the Open Meetings Act. Because it is a state executive branch agency, it must comply with the requirements of W. Va. Code § 6-9A-3(e), i.e., file its meeting notices for publication on the Secretary of State's website at least five business days prior to a meeting. The Committee also noted that a governing body may only be exempted from the provisions of the Open Governmental Proceedings Act by explicit statutory language.

Contract Exemptions (CE) 2022

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 2022 in the following matters:

[Contract Exemption 2022-01](#) - Wyoming County Health Department

The Wyoming County Health Department (“Health Department”) contracts with Family Healthcare Associates Inc. (“Family Healthcare”) to provide family planning, breast and cervical cancer screenings, and other medical services to patients through the Health Department’s Women’s Health Program. The Health Department holds clinics approximately twice a month and Family Healthcare staffs the clinics. This Contract Exemption request has been submitted by the Health Department through its new Administrator. The Health Department needed a Contract Exemption to continue contracting with Family Healthcare because of the ongoing prohibited financial relationship of a Board Member and its Health Officer with the business

In [Contract Exemption 2014-02](#), the Ethics Commission authorized the Health Department to contract with Family Healthcare at a rate of \$45 per hour for medical services, and the rate included malpractice insurance coverage through Family Healthcare’s insurance policy. The Health Department subsequently requested extensions of the initial Contract Exemption to authorize it to continue contracting with Family Healthcare under the same rate and terms as the 2014 Exemption. The Ethics Commission granted the extensions in Contract Exemptions [2016-02](#), [2018-04](#), and [2019-01](#).

Contract Exemption 2019-01 expired, and the Health Department sought a short-term extension to allow it time to determine if there are other providers willing and able to provide these services to the Health Department. The Requester states that without a short-term exemption, the Health Department will be unable to provide medical services to patients who receive medical care through the Women’s Health Program. The Health Department states that if it discontinues the clinic, patients will have to travel to Beckley, in Raleigh County, or to other counties, for comparable services which would result in additional costs and undue hardship to the patients.

The Ethics Commission found that denial of a short-term Contract Exemption would result in undue hardship to citizens in Wyoming County who receive healthcare through the Women’s Health Program. The Ethics Commission granted the Wyoming County Health Department a Contract Exemption to allow it to continue contracting with Family Healthcare at a rate of \$45 per hour, which includes Family Healthcare providing liability insurance for the services it provides, through November 15, 2022, for the Women’s Health Program clinics.

If the Health Department wants to continue contracting with Family Healthcare after November 15, 2022, it must seek and receive another Contract Exemption. The Health Department must demonstrate in its Contract Exemption request that it took meaningful efforts to obtain quotes or bids from other qualified medical providers that are able to provide the needed services.

[Contract Exemption 2022-02](#) - Pleasants County Development Authority

The Pleasants County Development Authority received an exemption for the prior sale of property at a business park to a candy manufacturing business owned, in part, by Pleasants County Commissioner Michael W. Smith, Jr.

The Business Park consists of approximately four acres and is in its preliminary stages of being developed.

On July 2, 2020, the Ethics Commission granted a Contract Exemption to the Pleasants County Development Authority authorizing it to lease space to Smith Candy at the Business Park in [Contract Exemption 2020-05](#). This exemption was limited to leasing the space, not purchasing it.

For reasons explained in the Exemption, the lease arrangement fell through. Around April 2022, Smith Candy purchased a 0.88 acre lot at the Business Park for the preset price of \$140,000. According to the Requester, Smith Candy did not attempt to negotiate a lower price. No other manufacturing facility has approached the Development Authority to purchase a lot at the Business Park.

The Ethics Commission held that prohibiting the Development Authority from selling a lot at the Business Park to Smith Candy would result in excessive cost or undue hardship to the Development Authority by impeding its ability to develop the Business Park and its infrastructure for the purpose of facilitating economic development in Pleasants County.

[Contract Exemption 2022-03](#) - WV Department of Transportation, Division of Highways

The Division of Highways (DOH) is responsible for maintaining the state road system. The DOH has a Maintenance Management System (“Maintenance System”) which it uses to track maintenance on the state road system.

The DOH employs Charles Murphy as a Highway Engineer Trainee 2. Mr. Murphy performs work for the DOH District 2 Maintenance Design Section, and his work with the Maintenance Design Section mostly involves pavement and pile wall design. Mr. Murphy also has assigned duties which he performs at the DOH Central Office Operations Division located in Charleston, WV. His Operations Division duties include assisting the DOH with developing its Maintenance System. For example, he reconciles data from the ten DOH Districts. The DOH states that Mr. Murphy has significant expertise in computer systems and serves in an internal consulting role on improving the DOH’s internal maintenance system.

Mr. Murphy is the sole owner of Road Data System, LLC, which he formed in 2019. Individually and through this company, Mr. Murphy has developed a computer application (“app”) that allows data to be inputted and uploaded even if there is no

cellular phone or internet service in the area. His app also has an information system which uses data from the linear referencing system. The linear referencing system is used by the DOH and other public and private entities.

Mr. Murphy has a patent pending on his app. He has not, at present, sold his app to any government agency or business. Mr. Murphy has offered the DOH free use of his app under terms that allow him to keep any intellectual property improvements to the app made by the DOH.

The DOH asked permission to use Mr. Murphy's app for the following reasons:

a. The app will allow DOH maintenance employees and other employees to upload information in the field, as opposed to inputting their information back at an assigned workstation. For example, if a DOH employee discovers that a roadway on a rural secondary route is slipping over the hillside, the DOH employee can note that deficiency and upload the information in real time.

b. The use of the app will allow the DOH to determine what it needs to enable its employees to remotely input data in real time. (While technology included with the app is part of the system it will need, the DOT will need other equipment and technology services to make the new system workable.)

The DOH states that its technology employees and the WV Office of Technology have determined that the use of Mr. Murphy's app is in the best interest of the state to enable the DOT to determine what apps, operating systems, and services it needs to implement real time data inputting by DOH employees.

The Ethics Commission held that it would create an undue hardship to prohibit the DOH's free use of Mr. Murphy's app for the purpose of determining its technology needs to improve the state road maintenance system in the long run. The DOH may, therefore, enter into a License Agreement with Mr. Murphy under terms that allow the DOH to use his app for free but allow Mr. Murphy to retain the ownership interests in any improvements made to his app by the DOH through its use of the app. This Contract Exemption does not authorize the DOT or DOH to purchase the app or other technology from Mr. Murphy in the future.

[Contract Exemption 2022-04](#) - Wyoming County Health Department

This Contract Exemption is an extension of the short-term Contract Extension granted to the Wyoming County Health Department in [Contract Exemption 2022-01](#). The underlying facts and procedural history are substantially the same as those set forth in Contract Exemption 2022-01 and are not repeated herein.

In support of the instant Contract Exemption request, the Health Department Administrator submitted documentation showing that the Health Department advertised

for medical providers to provide services to the Women's Health Program in the print editions of the listed newspapers for the stated periods:

- Bluefield Daily - three Saturdays
- Register Herald - three Saturdays
- Logan Banner - four days
- Charleston Gazette - seven days

The Health Department also advertised online on Monster.com for 30 days. The Health Department states, however, that no medical providers responded to the request for proposals for services.

The Ethics Commission ruled as follows. "The Ethics Commission holds that the Health Department made a meaningful effort to advertise for medical providers to provide services for the clinics. The Ethics Commission finds that denying a Contract Exemption to the Wyoming County Health Department to contract with Family Healthcare Associates Inc. would result in undue hardship to citizens in Wyoming County who receive healthcare through the Women's Health Program clinics. If the Wyoming County Health Department cannot hold its health clinics, then the patients who receive medical services through the Women's Health Program clinics will have to bear the cost and inconvenience of traveling to Beckley or other counties to receive comparable medical services. Family Healthcare Associates Inc. appears to be the only medical provider willing to contract with the Health Department to provide medical services for the Women's Health Program clinics.

The Ethics Commission granted the Wyoming County Health Department a Contract Exemption to allow it to continue contracting with Family Healthcare Associates Inc. at a rate of \$45 per hour, which includes Family Healthcare Associates Inc. providing liability insurance for the services it provides. The Exemption was granted in an amount not to exceed \$5,000 per fiscal year for fiscal years 2023, 2024, and 2025."

School Board Advisory Opinions (SBAO) 2022

[School Board Advisory Opinion 2022-01](#) - County Board of Education Member- Elect

Categories: Permitted Office; Miscellaneous

A **County Board of Education Member-Elect** asked whether being an unpaid volunteer coach for a public school in the same county where he will serve as a Board of Education member is prohibited employment per W. Va. Code § 18-5-1a(a)(2).

The Requester was elected to the County Board of Education ("BOE"). During the previous school year, the Requester served as an unpaid assistant volunteer coach for

an athletic team at one of the public schools in the same county he was elected to the BOE. The Requester states that he is aware that the Ethics Commission has previously ruled that it is permissible for board of education members to serve as unpaid volunteer coaches under the Ethics Act and W. Va. Code § 61-10-15. The Requester asked whether continuing as an unpaid volunteer coach would disqualify him from service on the county board of education pursuant to W. Va. § 18-5-1a, which establishes the eligibility and training requirements for board of education members.

The Legislature has only given the Ethics Commission authority to issue Advisory Opinions to BOE members and members-elect on whether “another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.” W. Va. Code § 18-5-1a(b). The Ethics Commission does not have statutory authority to determine whether an unpaid volunteer coach is an employee of the board of education for purposes of the eligibility requirements for serving on the county board of education.

Pursuant to W. Va. Code § 18-5-1a, the Ethics Commission’s authority is limited to determining whether a position held is a “public office.” The Ethics Commission has analyzed previously what constitutes a public office. In SBAO 2014-04, the Commission, citing *Carson v. Wood*, 175 S.E.2d 482 (W. Va. 1970), held that:

Among the criteria to be considered in determining whether a position is an office or a mere employment are whether the position was created by law; whether the position was designated an office; whether the qualifications of the appointee have been prescribed; whether the duties, tenure, salary, bond and oath have been prescribed or required; and whether the one occupying the position has been constituted a representative of the sovereign.

The position of unpaid volunteer coach is not created by law nor is it designated as “an office.” The tenure, salary, or bond for an unpaid volunteer coach is not prescribed by law, and an unpaid volunteer coach does not take an oath of office. The Ethics Commission held that the position of unpaid volunteer coach does not constitute a public office barring service on the board of education. The Opinion notes that the Ethics Commission, nevertheless, does not have authority to rule whether the BOE member may be an unpaid volunteer coach under this Code provision.

[School Board Advisory Opinion 2022-02](#) - County Board of Education Member

Categories: Private Gain; Voting

A **County Board of Education Member** asked whether she may serve on a County Public Library Board per W. Va. Code § 18-5-1a(a)(3)(A). (The facts in this Opinion are the same as Advisory Opinion 2022-18.)

The Commission held that, consistent with its past Opinions and the criteria established by the West Virginia Supreme Court in *State ex rel. Carson v. Wood*, 154 W. Va. 397, 405, 175 S.E.2d 482, 487 (1970), that a Public Library Board Member position is a public office for purposes of W. Va. Code § 18-5-1a because it was created by a Special Act of the Legislature, West Virginia Code defines the terms of office and duties for public library board members, and the Board Members exercise some portion of sovereign power through their administration of the Public Library.

The Opinion states that the primary scope of a public library is not related to public schools because public libraries provide services “free for the use of all persons living within the area” not just to schools or students in the school system. W. Va. Code § 10-1-7. The Ethics Commission concluded that a county board of education member may serve on the Public Library Board because there is no compensation for serving on the Public Library Board and the primary scope of public libraries does not relate to public schools. W. Va. Code § 18-5-1a(a)(3)(A)(ii).

Property Exemptions (PE) 2022

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 received no Property Exemption requests in 2022.

Employment Exemptions (EE) 2022

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 requested and granted during 2022:

EE 2021-01 Ahmed N. K. Mongi, Bridge Review Section Head, Quality Assurance and Project Management, Department of Transportation, Division of Highways

- EE 2022-02** Brian T. White, Construction Inspector - Resurfacing, Department of Transportation, Division of Highways
- EE 2022-03** Brandon A. Corns, Project Control Senior Technician, Department of Transportation, Division of Highways
- EE 2022-04** David K. Hoffman, II, Project Control Section Supervisor - Technologist, Department of Transportation, Division of Highways
- EE 2022-05** Terra L. Goins, Highway Engineer Senior, Department of Transportation, Division of Highways
- EE 2022-06** Todd Dankmyer, Highway Engineer Associate, Department of Transportation, Division of Highways
- EE 2022-07** Kevin A. Hall, Highway Engineer Senior, Department of Transportation, Division of Highways
- EE 2022-08** Michael C. May, Area Supervisor, Department of Transportation, Division of Highways
- EE 2022-09** Michael L. Folio, General Counsel, Office of Health Facilities, and Administrator/ General Counsel, Dangerousness Assessment Advisory Board, Department of Health and Human Resources
- EE 2022-10** Scott Billings, Transportation Engineering Technician, Department of Transportation, Division of Highways
- EE 2022-11** Duane B. Blevins, Highway Engineer Trainee II, Department of Transportation, Division of Highways
- EE 2022-12** Deidra L. Begley, Assistant Director, Alternative Project Delivery, Department of Transportation, Division of Highways
- EE 2022-13** Sasha Danberry, Assistant Director, Department of Transportation, Division of Highways
- EE 2022-14** Douglas W. Kirk, Highway Engineer, Hydraulic and Drainage, Department of Transportation, Division of Highways
- EE 2022-15** Chris K. Williams, Highway Engineering Analyst, Traffic Signal Designer, Department of Transportation, Division of Highways
- EE 2022-16** David Ian Webster, Highway Engineer, Performance Management Division, Asset Management Section, Department of Transportation, Division of Highways
- EE 2022-17** Meagan L. Atkinson, Transportation Engineering Technician, Department of Transportation, Division of Highways
- EE 2022-18** Jimmy W. Pritt, Lab Coordinator, New Products Evaluation Coordinator, Materials Control, Soils and Testing Division, Department of Transportation, Division of Highways
- EE 2022-19** Keith Woodruff, Highway Transportation Engineering Technician (HTRET), Department of Transportation, Division of Highways
- EE 2022-20** Michael R. Jones, Chemist 3, Environmental and Coatings Section, Department of Transportation, Division of Highways
- EE 2022-21** Paul M. Farley, Highway Engineer, Department of Transportation, Division of Highways
- EE 2022-22** Rion N. Wimer, Highway Engineer Associate - Senior, Department of Transportation, Division of Highways

- EE 2022-23** Richard C. Aliff, Transportation Engineering Technician-Senior, Construction, Department of Transportation, Division of Highways
- EE 2022-24** Marvin W. Carder, DO6 Construction Area Supervisor, HTRETCN, Department of Transportation, Division of Highways
- EE 2022-25** Brian L. Neely, Transportation Technician, Department of Transportation, Division of Highways
- EE 2022-26** Jason A. Marino, Highways Realty Agent, Department of Transportation, Division of Highways
- EE 2022-27** John P. Toomey, Division Manager 2, Department of Transportation, Division of Highways
- EE 2022-28** Donald Maynor, District Surface Mine Inspector, Office of Miners' Health Safety and Training
- EE 2022-29** James M. Colby, Engineering Technologist, Department of Transportation, Division of Highways
- EE 2022-30** Blaine C. Hess, Superintendent of Schools, Jackson County Board of Education
- EE 2022-31** Carlos A. Semple-Perriea, Chemist III, Department of Transportation, Division of Highways
- EE 2022-32** Tanya C. Cyrus, Chief Quality and Integrity Officer, Bureau for Medical Services
- EE 2022-33** Noah D. Staker, Highway Engineer Trainee II, Department of Transportation, Division of Highways
- EE 2022-34** Phillip Brown, Quality Assurance Program Administrator, Department of Transportation, Division of Highways
- EE 2022-35** Robert C. Wilson, Highway Engineer, Programming Division, Department of Transportation, Division of Highways
- EE 2022-36** Barrie F. Foster, Highway Engineer Trainee, Department of Transportation, Division of Highways
- EE 2022-37** Larry G. Shea, Highway Engineer Senior, Department of Transportation, Division of Highways
- EE 2022-38** Daryle Wayne Bayless, Director of Communications and Intergovernmental Affairs, Department of Veterans Assistance
- EE 2022-39** Timothy N. Smith, Transportation Engineer Associate, Department of Transportation, Division of Highways
- EE 2022-40** Joshua D. Anderson, Deputy District Engineer, Maintenance, Department of Transportation, Division of Highways
- EE 2022-41** Charles R. Hall, Highway Division Manager 2, Department of Transportation, Division of Highways
- EE 2022-42** Jack F. Harden, II, Project Engineer, Department of Transportation, Division of Highways
- EE 2022-43** Donald W. Rose, Transportation Engineering Analyst, Department of Transportation, Division of Highways
- EE 2022-44** Lisa L. DiNallo, Information Systems Consultant, Department of Transportation, Division of Highways

- EE 2022-45** Patrick B. Brennan, Highway Engineer, Department of Transportation, Division of Highways
- EE 2022-46** Heather L. Hutchens, General Counsel, Department of Education
- EE 2022-47** Toni Rogers, D-1 Resurfacing Coordinator, Department of Transportation, Division of Highways
- EE 2022-48** Gary W. Mullins, D-1 Acting Design Engineer, Department of Transportation, Division of Highways
- EE 2022-49** Jamie Taylor, Director/Chief Examiner, Offices of the Insurance Commissioner
- EE 2022-50** Lacey Cannon, Information Systems Specialist, III, Department of Health and Human Resources, Office of Management Information Systems
- EE 2022-51** Jonathan Bailey, Highway Transportation Engineer Technician, D-1 Material Supervisor, Department of Transportation, Division of Highways
- EE 2022-52** Michael A. Mance, Highway Engineer Senior, Assistant Director, Department of Transportation, Division of Highways
- EE 2022-53** French Donald Mackes, Jr., Acting Mainframe Support and Application Development Unit Leaders, Department of Transportation, Division of Highways
- EE 2022-54** Suman Thapa, Highway Engineer, Department of Transportation, Division of Highways
- EE 2022-55** Samantha L. Chase, Insurance Program Manager, Director of Consumer and Claims Services Division, Offices of the Insurance Commissioner
- EE 2022-56** Justin R. Ward, District Inspector, Office of Miners' Health Safety and Training
- EE 2022-57** Joseph E. Raines, Underground Inspector, Office of Miners' Health Safety and Training
- EE 2022-58** David E. Cramer, Staff Engineer, Department of Transportation, Division of Highways
- EE 2022-59** Cindy Cramer, Director, Traffic Engineering Division, Department of Transportation, Division of Highways
- EE 2022-60** Shawn D. Jack, Asphalt Section Supervisor, Department of Transportation, Division of Highways
- EE 2022-61** Ryan Arnold, Area Engineer, Department of Transportation, Division of Highways
- EE 2022-62** Darby Clayton, Assistant Chief Engineer of Operations/Assistant Deputy State, Department of Transportation, Division of Highways
- EE 2022-63** Austin Lanham, Environmental Inspector, DEP, Division of Mining and Reclamation
- EE 2022-64** Todd A. Schoonover, Maintenance Assistant, Department of Transportation, Division of Highways
- EE 2022-65** Elizabeth A. Tucker, Transportation Engineer, Department of Transportation, Division of Highways
- EE 2022-66** James T. Collins, Assistant Chief Engineer of Construction and Materials, Department of Transportation, Division of Highways

EE 2022-67 W. Michael Sheets, Purchasing Director, Department of Administration,
Purchasing Division

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
2022	74	0	57	14	13	5
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

*The last four columns of this chart reflect the resolutions of Complaints that were 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
2022	74	0	58	16	5	0	11

*This chart reflects the status of the Complaints filed in 2022, which shows that 11 of them 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
2022	37	0
2021	30	0
2020	28	0
2019	27	0
2018	29	4

Public Hearings

No public hearings were held during 2022.

Conciliation Agreements

[Jason Woodman, Head Football Coach, Fairmont State University](#) (Pre-Complaint Conciliation Agreement)

Jason Woodman is employed by Fairmont State University as the head coach of the football team. Mr. Woodman was issued a P-Card to make purchases for the football program. The official supplier of Fairmont State University's athletic programs is BSN Sports, LLC, an online store selling athletic apparel and equipment. BSN Sports, LLC runs various promotions and has a bonus point program, whereby purchasers receive bonus points for purchases which can be used to obtain additional merchandise. On three occasions, once in the fall of 2019 and twice in late summer of 2020, Mr.

Woodman utilized bonus BSN Sports points, accumulated through purchases he made on behalf of Fairmont State University, to purchase items for himself and/or his family. The approximate value of the merchandise converted to personal use is \$590.

Woodman agreed that the bonus points were the property of Fairmont State University and that his use of the bonus points constituted use of my public employment for private gain in violation of W. Va. Code § 6B-2-5(b). Woodman agreed to pay a \$1000 fine, make restitution to Fairmont State University in the amount of \$590, undergo training on the Ethics Act, and cease and desist from any such actions in the future.

Damon Tillman, Mayor, City of Keyser (Pre-Complaint Conciliation Agreement)

Damon Tillman is the Mayor of the City of Keyser. Mr. Tillman had the Keyser Police Chief drive him from Keyser to Washington Dulles International Airport for a personal international flight unrelated to his mayoral duties. The Keyser Police Chief then picked Mr. Tillman up at the airport and drove Mr. Tillman home to Keyser. The total mileage cost for the two round trips between Keyser and Dulles in a Keyser Police Department vehicle was \$257.24. Mr. Tillman also had a City mechanic change the oil and oil filter in his personal vehicle. The oil and oil filter were purchased by the mechanic at Auto Zone on the City of Keyser's credit account which included a City discount and tax exemption.

Mr. Tillman admitted that he used his position for private gain in violation of W. Va .Code 6B-2-5(b) when he used a City of Keyser vehicle and the Police Chief to transport him to and from Dulles and when he used the City's funds, staff, tax exempt status, and discount to have the oil and oil filter changed in his personal vehicle even though he used his personal vehicle for city business and did not seek mileage reimbursement. He agreed to pay a \$250 fine, reimburse the City of Keyser \$07.24, and to undergo training on the Ethics Act.

VCRB 2021-30 Lisa Holstein, Threat Preparedness Coordinator, Boone County Health Department

Lisa Holstein was the Threat Preparedness Coordinator for the Boone County Health Department. She created a Threat Preparedness Assistant position and the hiring of her daughter in that position. She then served as her daughter's direct supervisor and made decisions affecting her daughter's working conditions, including pay rate. The position was not advertised and no other candidates were considered for the position. After her daughter ceased being employed by the Health Department, Ms. Holstein then asked her daughter to perform work for the Health Department as a non-W2 worker.

After Ms. Holstein's daughter ceased being employed by the Health Department, Ms. Holstein facilitated the hire of her son in the Threat Preparedness Assistant position. She then served as her son's direct supervisor and made decisions affecting her son's

working conditions, including pay rate. The position was not advertised and no other candidates were considered for the position.

Ms. Holstein admitted her actions of facilitating the hire of her daughter and son and directly supervising her daughter and son violated the Ethics Commission's nepotism restrictions in W. Va. Code § 6B-2-5(b) and W. Va. Code R. § 158-6-3 (2017). She agreed to a public reprimand, to pay a \$2,000 fine, to cease and desist from such actions in the future, and to undergo training on the Ethics Act.

VCRB 2021-45 Tia Robertson, former Auditor, City of Charleston

Tia Robertson was the City of Charleston Auditor from July 1, 2015, until August 16, 2021. Robertson, was responsible for overseeing the City's Accounting Department, including supervising the Department's four employees. Robertson had a subordinate employee perform personal tasks for Robertson during the work day on numerous occasions. Robertson asserts that she only asked the employee to perform the tasks during the employee's lunch period voluntarily. The subordinate employee performed these tasks at various times throughout the six years that she worked with Robertson.

Robertson admitted that being in a supervisory role can unfairly and inappropriately cause an employee to feel coerced into doing personal errands for a supervisor. Robertson agreed that when the totality of the circumstances are considered, the time spent by the subordinate employee performing personal services for her was more than trivial. Robertson agreed to pay a \$2,000 fine, to undergo training on the Ethics Act, and to cease and desist from any such actions in the future.

VCRB 2021-54 and 55 Dr. Pamela Alderman, President of Southern West Virginia Community and Technical College

Dr. Pamela Alderman is the President of the Southern West Virginia Community and Technical College and has held that position since May 2020. William Alderman, II, is the son of Dr. Pamela Alderman and has been a faculty member of the College since 2005. Dr. Pamela Alderman discussed the continuance of William Alderman, II, in the position of Interim Director of Arts and Sciences with Dr. Michael Jiles, the Dean of Arts and Sciences, in September 2021. While Dr. Alderman did not advocate that her son be given a pay raise or that he continue in his position, she acknowledges that she participated in matters affecting the working conditions of her son by having discussions with Dr. Jiles about her son's reappointment to the position, signing her son's employment contract, and authorizing the forwarding of her son's employment contract to the West Virginia Council for Community and Technical College Education for approval.

Dr. Alderman admitted that she should have delegated the task of approving the recommendation for the reappointment of and salary increase for her son to another Community and Technical College Administrator or to one of its appointed Board

Members. Dr. Alderman agreed to pay a \$750 fine, to undergo training on the Ethics Act, and to cease and desist from any such actions in the future.

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

2022 – 362
2021 – 321
2020 – 347
2019 – 358
2018 – 387

Lobbyist registrations by calendar year

2022 – 226
2021 – 199
2020 – 131
2019 – 220
2018 – 204

Lobbyist spending by calendar year

2022 – \$429,854.83
2021 – \$342,983.58
2020 – \$713,783.11
2019 – \$498,382.31
2018 – \$455,617.23

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 at [Financial Disclosure Search](#).

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

2022 – 3,759
2021 – 3,240
2020 – 3,285
2019 – 3,017
2018 – 3,903

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 2,284 public officials, employees, and lobbyists in 2022 for the following agencies, associations, and events:

- Auditor's Office P-Card training
- Auditor's Office Sheriff's training
- Association of County Commissioners annual meeting
- Association of Government Accountants annual meeting
- Association of Municipal Judges annual meeting
- Attorney General's Office trainings
- Charleston Youth Council
- City of Charleston
- City of New Martinsville
- Clay County Health Department
- County Commissioners' Association
- Jefferson County Development Authority
- Legislative training
- Lobbyists training
- Local Board/Authority Training hosted by the Auditor's Office in South Charleston, Martinsburg, Bridgeport, Wheeling, and Beckley
- Municipal training in South Charleston, Martinsburg, Bridgeport, Wheeling, and Beckley
- Quarterly Trainings for the Public on the Ethics and Open Meetings Acts

State Auditor's Chapter 30 Licensing Board annual meeting
Treasurer's Cash Management Conference
Treasurer's Office annual training
WV Association of Housing Agencies
WV BOE Executive Secretary Association
WV Conservation Agency
WV Department of Administration
WV Department of Education
WV Department of Natural Resources Commissioners
WV Military Authority Trades Specialist Conference
WV School Board Association
Workforce WV

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