

WEST VIRGINIA ETHICS COMMISSION 2010 ANNUAL REPORT



WEST VIRGINIA ETHICS COMMISSION

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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). The Commission meets on the first Thursday of each month to consider advisory opinion requests and adjudicatory matters.

Chairperson
R. Kemp Morton, III
Huntington, WV

Larry L. Rowe
Malden, WV
(resigned Oct. 2010)

Vice-Chairperson
Drema S. Radford
Beckley, WV

Ronald G. Salmons
West Hamlin, WV

Jack Buckalew
Charleston, WV

Father Douglas B. Sutton
Mannington, WV

Charles Logan
Martinsburg, WV

Jonathan E. Turak
Wheeling, WV

Monte L. Williams
Morgantown, WV

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. W.Va. Code § 6B-2-2a. The Members oversee the investigation of verified complaints and determine whether a complaint should be dismissed or whether probable cause exists to believe that a violation of the Ethics Act may have occurred. The Members of the Review Board meet once a month.

Chairperson
James E. Shepherd, II
Huntington, WV

Daniel J. Guida
Weirton, WV

Michael A. Kawash
Charleston, WV

STAFF

Theresa M. Kirk
Executive Director

Lucy A. Suchy
Lobbyist Registrar

C. Joan Parker
General Counsel

Lietta J. White
Paralegal

Martin J. Wright
Deputy Counsel

Jackie L. West
Office Assistant

BUDGET

Fiscal Year 2010 \$657,506.00 (with 5% mid-year reduction)

Fiscal Year 2011 \$665,694.00

DUTIES OF THE COMMISSION

The Ethics Commission administers the Ethics Act by educating public servants covered by the Act, providing information to the public, interpreting and applying the provisions in the Act, and enforcing the requirements of the Act through an investigation and complaint process.

In addition to administering the Ethics Act, the Commission is charged with interpreting W.Va. Code § 61-10-15 through the issuance of advisory opinions. Further, Commission staff answers questions from governing bodies and their members and the Commission provides advisory opinions on the meaning and application of the Open Meetings Act or "Sunshine Law" through its Committee on Open Governmental Meetings. This Committee consists of Chairperson, Drema Radford, Commissioner Jack Buckalew and Commissioner Ronald Salmons.

Further, the WV Ethics Commission's Committee on Standards of Conduct for Administrative Law Judges answers questions from ALJs and provides advisory opinions to them relating to the Rules on Standards of Conduct. It also enforces the Code through an administrative procedure for adjudicating complaints filed against ALJs. This Committee consists of Chairperson Jonathon Turak, Commissioner Kemp Morton and Commissioner Salmons.

The Ethics Commission also administers the registration and reporting requirements for lobbyists as well as collecting financial disclosure reports which certain public servants are required to file annually.

Finally, the Ethics Commission is authorized to issue written advisory opinions to county board of education members, members-elect and candidates for election to the board whether they may hold certain other positions and serve on a county board in accordance with the provisions of W. Va. Code § 18-5-1a.

ADVICE

Public servants may seek informal advice from the Ethics Commission staff orally or in writing. If Commission staff is unable to answer the question based upon the plain language in the Ethics Act, or existing precedent, then a public servant may seek a formal advisory opinion. The Commission meets once a month to consider advisory opinion requests.

The following is an overview of the number of requests for advice received by the Commission in 2010.

STAFF ADVICE

YEAR	Telephone	Correspondence, including emails
2010	1889*	340

* Fiscal year 2010

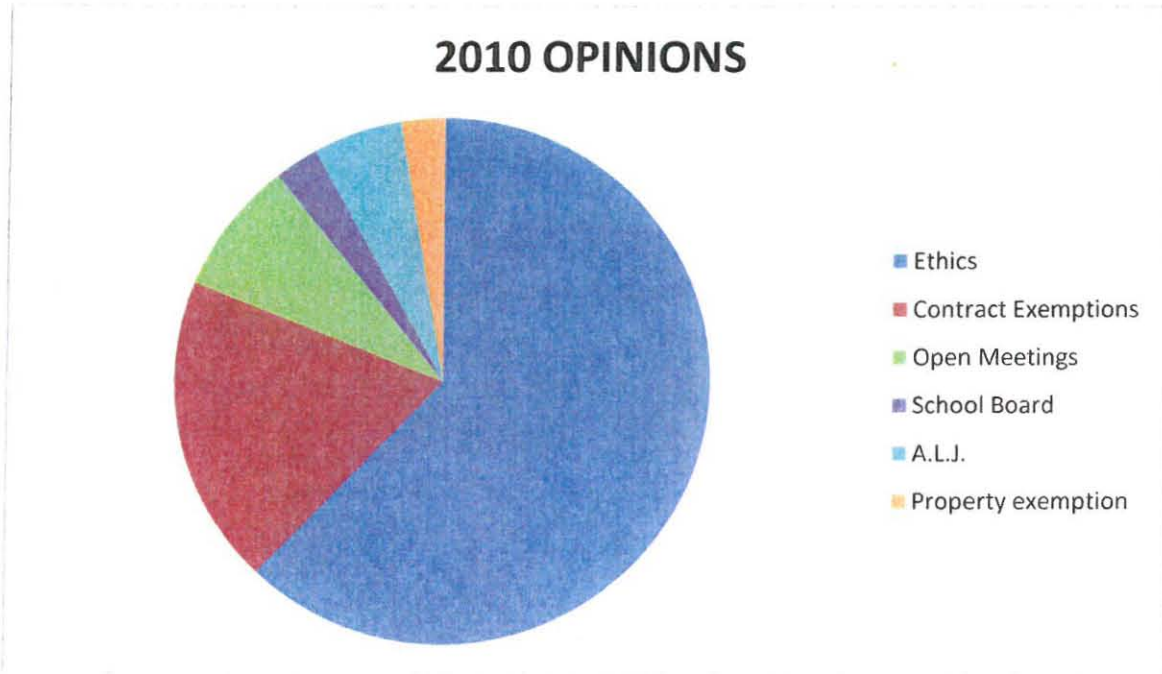
FORMAL ADVISORY OPINIONS

Subject Matter	2009	2010
Ethics	14	23
Open Meetings	8	3
A.L.J. Code of Conduct	1	2
Contract Exemptions	5	7
Employment Exemptions	10	19
Property Exemptions		1
TOTAL:	38	55

Training - Public Servants and Lobbyists

YEAR	Number Trained
2009	1436
2010	1660

The following is an overview of Advisory Opinions issued by the Commission in 2010.



A.O. 2010-01 - An **Elected member** of the Board of Public Works may solicit donations to underwrite the costs of a national conference and use the funds for meals and breaks, and certain social events, excluding golf. May acknowledge sponsors, but may not attribute an event to a single sponsor; may not indicate amount any sponsor donates. Use of funds Legislature appropriated to pay for attendees' meals does not constitute use of office for private gain. Opinion limited to Elected Members of the Legislature of Elected Members of the Board of Public Works who are soliciting for national or regional conferences in accordance with W. Va. Code §§ 6B-2-5(c)(6) and 6B-2-5(c)(7).

A.O. 2010-02 - A **City** may participate in a program, offered by a vendor, which provides a discount to all city employees for their personal (non-public) cell phones; and, the City employees may accept such a discount for their personal cell phones.

A.O. 2010-03 - A spouse of a **County BOE Member** may be employed as Chief mechanic, a service position that meets the exception in § 61-10-15. The Member may not use his position to obtain, increase or promote the interests of the spouse as a BOE employee.

A.O. 2010-04 - A **County Board of Education** (BOE) may contract with a private non-profit charitable organization when one of the BOE members sits on the board. The

common member may not vote on any matters related to any contract or other transactions between the BOE and the non-profit.

A.O. 2010-05 - An **Institution of Higher Education's** decision to allocate more than \$25 to recognize one or more employees, in lieu of expending up to \$25 per employee per fiscal year, does not violate the Ethics Act so long as the expenditure on any one employee does not exceed \$100, and the total amount expended for this purpose during the fiscal year does not exceed the sum total of \$25 per employee.

A.O. 2010-06 - A **Public Library** created by Special Act of the Legislature. The Ethics Act's prohibition against interest in public contract does not apply to part-time appointed official. Board member whose law firm represents library may serve on the board, but must recuse himself from all matters related to the law firm's contract. Board member of Public Library created by Special Act of the Legislature and joint venture of county and city entities not subject to § 61-10-15.

A.O. 2010-07 - A **lobbyist** must register as lobbyist for entity even if she lobbies for free since she is already a registered lobbyist for another entity, therefore she must identify both her paying and non-paying clients.

A.O. 2010-08 - A **City Council** may not vote to approve a change in the City Charter which would extend the current term of office for the City's elected public officials by one year.

A.O. 2010-09 - **County Rescue Service, Inc. (CRS)** is not a public entity. The members and/or employees are not subject to the provisions of the Ethics Act.

A.O. 2010-10 - **Board of Directors of a County Authority** - Ethics Act does not prohibit part time appointed officials from bidding at auction on items sold by Board on which they serve, so long as they recuse themselves from all related matters; but § 61-10-15 prohibits part time appointed officials from bidding at auction on items sold by Board on which they serve.

A.O. 2010-11 – A **State Legislator** may not accept two free airline tickets won in a random drawing at a public reception hosted by a State Agency for which the Legislature provides funds. Prohibition against use of office for private gain applies to expenditures by public entities.

A.O. 2010-13 – A **County Board of Education Member's spouse** may be employed as auditor in Central Office, a service position that meets exception in § 61-10-15. May not use position to obtain, increase or promote the interests of spouse as a BOE employee. May not vote on matters specific to his wife including raise, renewal of employment contract, or discipline. May vote on overall budget, but must recuse himself if line item affects wife or all four auditors if BOE specifically addresses any such line item .

A.O. 2010-14 – A County Board of Education Member’s restaurant may not contract with the BOE to provide fast food for special events. Further, county schools and/or school sports teams may not contract with County BOE Member’s fast food restaurant to provide food for school sports teams using school funds. County BOE Member’s fast food restaurant may not sponsor fundraisers on behalf of school teams. County BOE Member’s fast food restaurant may, under certain conditions, sponsor fundraisers on behalf of booster organizations. Last, County BOE Member’s fast food restaurant may, under certain conditions, sell food to credit union even though BOE provides office space to credit union.

A.O. 2010-15 - A County BOE Member may not be paid to officiate as a sports official in his own county . The County BOE Member may volunteer as a referee and receive \$1 to obtain insurance coverage

A.O. 2010-16 – A County BOE Member may contract with State Department of Education for online teaching even though some teachers from her county may participate. The subject contract is with the State, not County BOE, and thus Member lacks control over contract County. Further, BOE Member lacks control over County BOE’s reimbursement of county teachers’ expenses incurred in taking Member’s online course.

A.O. 2010-17 –A State Agency may not, absent express statutory authority, have its employees work for, or otherwise administer a private organization during their prescribed compensated public work hours or use more than a *de minimis* amount of public resources. Further, absent express statutory authority, public servants may not fundraise on behalf of the private non-profits during prescribed compensated public work hours or use more than a *de minimis* amount of public resources.

A.O. 2010-18 - A City Council may not use public funds to purchase Sam’s Club cards for the personal use of its employees or their family members.

A.O. 2010-19 - An Elected Public Official may not use public funds to purchase funeral flowers.

A.O. 2010-20 – A Conservation District may not expend public funds to construct a soil conservation project on property owned by an Elected Board Member.

A.O. 2010-21 - A County Board of Education may not, due to the prohibitions in W.Va. Code § 61-10-15, contract with a private club in which an Elected Board Member, Treasurer and spouse of the Superintendent own stock unless it seeks and receives a contract exemption.

Contract Exemptions

C.E. 2010-01 Town of Wayne - temporary exemption

Granted a four-month extension to a previously granted exemption allowing the Town to

lease building owned by Mayor in order to satisfy full duration of lease term (expires 9/1/2010)

C.E. 2010-02 City of Hurricane

Denied renewing exemption allowing the City to continue contracting with business owned by Mayor to service its phone system and website server.

C.E. 2010-03 Village of Beech Bottom

Denied an exemption for Mayor in a Mayor-Council municipality to be compensated for performing services for the Village in addition to his established salary

C.E. 2010-04 Town of Wayne

Granted a one year exemption, with limitations, for the Town to continue leasing building owned by Mayor. (expires 7/1/2011)

C.E. 2010-05 Randolph County Board of Education

Denied exemption to continue making purchases from a Wal-Mart store where newly elected member David Kesling is employed as the store manager and owns shares of stock therein; granted a limited exemption to the Board of Education, and its member schools, to purchase supplies and items from any other Wal-Mart store, including on-line purchases.

C.E. 2010-03 Supplement, Randolph County Board of Education

The Randolph County BOE may make purchases from the Wal-Mart store as the affected Board Member has taken action to divest himself of his shares in his company and a will not have his bonus tied to any purchases made by the school system.

C.E. 2010-06 Town of Handley

Granted exemption authorizing continued employment of Mayor as Police Chief where Mayor receives \$100 monthly salary and an additional \$250 monthly to serve as Chief of Police until August 5, 2012 so long as: (1) the Town adopts a resolution giving it, rather than the Mayor, direct oversight and supervision of the Town Police Chief, and allowing citizens direct access to Town Council regarding police matters that may arise; (2) the Mayor only uses the police cruiser for official business even if on duty 24/7; (3) the town pursues any and all sources of outside funding to finance a Police Chief Position; (4) the Town advertises for the position of Police Chief for not less than one month in newspapers and other media that reach the entire State of West Virginia; (5) the Mayor recuses himself from participation in advertising, interviewing, and selecting candidates for the position. At the expiration of this exemption the Town may only seek to have the exemption renewed if it first makes a good faith effort to hire a Police Chief. (Exemption expires 8/5/2012)

Open Meetings Opinions

O.M.A.O. 2010-01 - Morgan County Rescue Service

Is not a public agency subject to the provisions of the Open Meetings Act.

O.M.A.O. 2010-02 - Mineral County Commission

Proposed procedural rules should be revised to include a specific provision that, when counting days, the day of the meeting, Saturdays, Sundays and legal holidays are excluded; to comply with the posting deadline, the agenda must be posted by close of the business day. Proposed rule limiting attendance at meetings "upon such basis as the Commission may from time to time select" is too broad. Rule should be revised to ensure that no one is excluded from attending a crowded meeting for an arbitrary reason. Proposed rule adopting Roberts Rules of Order should be revised to clarify that the State Constitution and State laws supersede Roberts Rules of Order in the event of any conflict. Other provisions in proposed rules are not inconsistent with the Act.

School Board Advisory Opinions

S.B.A.O. 2010-01 - A School Board Member may not serve on a County Board of Health.

Administrative Law Judge Code of Conduct

A.L.J.A.O. 2010-01 - The mere presence of a financial and business relationship between a part-time ALJ and his private law firm partner who seeks to appear in a representative capacity before another ALJ in the ALJ's employing agency tends to reflect adversely on the impartiality of the administrative judicial process. Code of Conduct for ALJs prohibits the continued employment of the part-time Administrative Law Judge if his private law firm partner appears in a representative capacity before another ALJ in the ALJ's employing agency.

A.L.J.A.O. 2010-02 - An ALJ for a state agency whose former employment by the State of West Virginia as an attorney assigned to the employment unit of a State agency was terminated has a conflict of interest that requires a lifetime ban on the ALJ hearing cases involving his former agency client.

ENFORCEMENT

The Commission is charged with enforcing the West Virginia Ethics Act. Citizens may file a Verified Complaint. The Commission may initiate a complaint by majority vote if it receives or discovers credible information, which, if true, would merit an inquiry into whether a violation of this article has occurred. W.Va. Code § 6B-2-3a.

In 2010 there were five conciliation agreements approved by the Commission. There was one public hearing before an Administrative Law Judge (ALJ). The Commission is awaiting the recommended decision of the ALJ.

Verified Complaints

Year	Total Filed	Commission Initiated (of total filed)	Dismissed Failure to State a Claim	Investigated
2009	40	7	14	26
2010	42	6	7	35

Informal Complaints

YEAR	Received
2009	78
2010	63

Conciliation Agreements Approved in 2010

VCRB 2009-14 - Re: Board of Education Member

Relevant Facts: The Respondent was an elected member of a County Board of Education (BOE). The County BOE sets the salary of all BOE employees, and establishes supplemental pay for certain employees using funds from an access levy. The County BOE employs four (4) auditors, one of whom is Respondent's wife. During a budget work session, Respondent proposed a pay raise for the auditors. On a later date, the County BOE adopted the 2009-10 budget by a unanimous vote of all five members. Respondent voted on the 2009-2010 budget which included pay increases for various classes of employees including, but not limited to, auditors. Respondent did not vote on any individual increases in pay for his spouse nor did he vote separately on any pay increase for auditors. Instead, Respondent voted in favor of the entire budget.

It was alleged that the Respondent used his office for private gain and violated the rules on voting.

Conciliation Agreement: (1) A Public Reprimand; (2) \$250.00 Fine; and, (3) That Respondent would request a formal advisory opinion on voting. (6-3-2010 Commission Order).

VCRB 2009-21 - Re: Mayor

Relevant Facts: The Respondent was the Mayor of a Town. During his time as Mayor, Respondent took home several items owned by the Town for his own personal use, including a computer monitor, a copier, and a weed eater. Also, Respondent stored

several personal items in two of the Town's storage areas. Respondent admitted that he used the town's storage facilities for his personal items and took town equipment home and attempted to use it for his own personal use.

It was alleged that the Respondent used his office for private gain.

Conciliation Agreement: (1) \$100.00 Fine; (2) Cease and Desist from the use of Town storage and equipment, specifically to remove his own property from Town storage facilities within thirty (30) days of signing the Agreement; and (3) Agreed to work with Town Council or a qualified attorney to inform Town employees, in writing, that they may not use public equipment for private use. (9-7-2010 Commission Order).

Re: Mayor (Pre-Complaint Settlement)

Relevant Facts: In the winter, after a snowstorm, a town's Mayor requested a town employee to drive the town's truck with snowplow to the Mayor's private business located in another city. The town employee drove the town's truck with snowplow to the private business of the Mayor in the other city, cleared the snow from the private business's parking lot, and drove back to the town in less than one hour. The Mayor reimbursed the town the amount of One Hundred Dollars (\$100.00) for the use of the snowplow and the employee's time.

It was alleged that the Respondent used his office for private gain.

Conciliation Agreement: (1) Cease and Desist from the use of public equipment for personal benefit; and, (2) pay a fine of Two Hundred Fifty Dollars (\$250.00). (6-3-2010 Commission Order)

CIC 2009-02 - Re: Deputy Assessor

Relevant Facts: Respondent was employed full-time by the County Assessor's office as a Deputy Assessor. During the same time period that he was employed as Deputy Assessor, Respondent also owned and operated a private investigation business. During the relevant time period, Respondent conducted his private business activities during public work hours without taking leave and used public equipment. Respondent acknowledged and agreed that overall it was more than a *de minimis* use of public resources and public equipment.

It was alleged that the Respondent used his office for private gain.

Conciliation Agreement: (1) Public Reprimand; (2) Cease and Desist from use of public equipment and office computers for private use; (3) Cease and Desist from conducting private business during public work hours without taking leave; (4) \$ 5,200.00 Restitution to the County Assessor's Valuation Fund as reimbursement for the monetary equivalent of time spent performing duties on public time over the last two

years; (5) \$900.00 - reimbursement to the WV Ethics Commission/State of WV for the cost of the investigation; and (6) \$1,500.00 Fine. (5-12-2010 Commission Order)

CIC 2010-01 - Program Manager for State Agency

Relevant Facts: Respondent was employed as a Program Manager for a state agency. As Program Manager, Respondent was in charge of administering and managing a federal grant program focused on workforce training and development. It was alleged that she used her public position to unlawfully benefit her son and others through her oversight of the grant administration process. The Respondent pleaded guilty to federal charges stemming from the conduct in question.

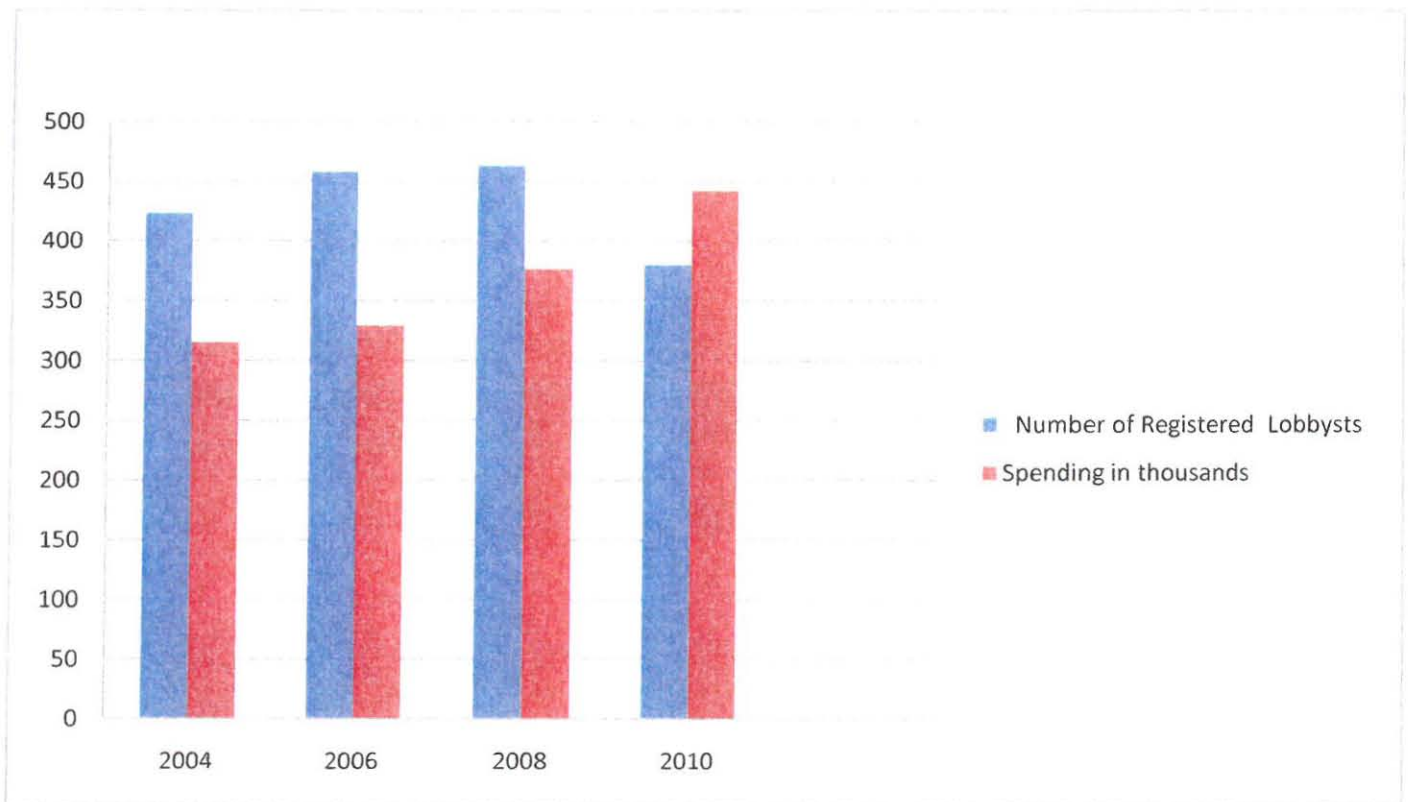
It was alleged that the Respondent used her office for private gain.

Conciliation Agreement: (1) A Public Reprimand; (2) Agreed to forgo seeking or accepting any public office, elected or appointed, or public employment with any public entity for ten (10) years following the execution of this Agreement; and (3) Pay a fine of One Thousand dollars (\$1,000.00) to the West Virginia Ethics Commission. (7-9-2010 Commission Order)

LOBBYISTS

The Ethics Act requires anyone who is compensated to lobby in support of or opposition to any legislation or legislative or administrative rules, or who spends over \$150 annually on public officials in furtherance of such activity to register with the Ethics Commission. Registered lobbyists are required to file periodic reports of their lobbying activity, including reporting certain expenses. These reports are public records and are subject to random audits by the Commission. In 2010 there were 380 active registered lobbyists.

The following is an overview of the number of lobbyists registered and their spending for the years 2004, 2006, 2008 and 2010.



FINANCIAL DISCLOSURE STATEMENTS

Certain public officials and candidates are required to file financial disclosure statements with the Commission. Candidates for all state and county offices must file a financial disclosure statement within ten days after he or she files a certificate of candidacy. Those persons who are elected to such positions thereafter file a financial disclosure report on an annual basis. In addition, all members of state boards, commissions and agencies who are appointed by the governor must file within 30 days after assuming their duties.

Annual statements are also required from cabinet secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, and department heads. These forms are public records available for inspection in the Commission's offices during normal business hours. In 2010, there were 3543 forms filed with the Commission.

CONCLUSION

In 2010 the Commission continued its outreach and education efforts. As part of these efforts it created a new website and updated its Open Meetings Act booklet and Ethics Act booklet. The Commission made great strides towards producing a new lobbyist training video which it anticipates being ready for release by March of 2011. Further, it proposed Legislation to strengthen the Ethics Act by requiring the disclosure of additional information on financial disclosure statements. Additionally, it supported a provision added to this Bill to tighten the Ethics Act's revolving door provision by imposing a one year cooling off period before certain high-ranking public officials may lobby the Legislature. Although the Bill failed, the process brought heightened awareness to these areas of the Ethics laws and set the stage for support of these measures during the 2011 Legislative Session.