

WEST VIRGINIA ETHICS COMMISSION 2011 ANNUAL REPORT



WEST VIRGINIA ETHICS COMMISSION

210 Brooks Street, Suite 300
Charleston, West Virginia 25301
(304) 558-0664 (866) 558-0664 FAX (304) 558-2169
www.ethics.wv.gov

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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, requests for exemptions and adjudicatory matters.

Chairperson
R. Kemp Morton, III

Ronald G. Salmons
West Hamlin, WV

Vice-Chairperson
Drema S. Radford
Beckley, WV

Father Douglas B. Sutton
Mannington, WV

Jack Buckalew
Charleston, WV

Jonathan E. Turak
Wheeling, WV

Frank Deem
Vienna, 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

Gordon A. Ingold
Investigator

Martin J. Wright
Deputy Counsel

Lietta J. White
Paralegal

Kimberly B. Weber
Legal Counsel

Jackie L. West
Office Assistant

BUDGET

Fiscal Year 2011 \$665,694.00

Fiscal Year 2012 \$755,305.00

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 Jonathan Turak, Commissioner Kemp Morton, Commissioner Ronald Salmons and Alternate, Commissioner Monte Williams.

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 2011.

STAFF ADVICE

YEAR	Telephone	Correspondence, including emails
2010	1889*	340
2011	1598	453

* Fiscal year 2010

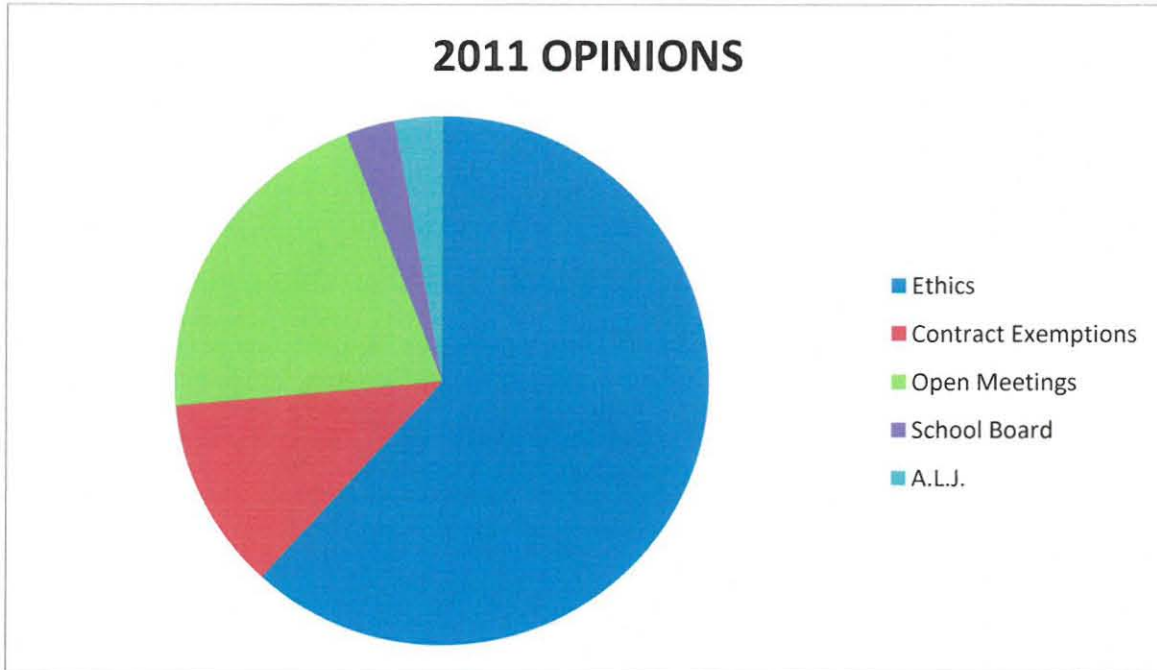
FORMAL ADVISORY OPINIONS

Subject Matter	2009	2010	2011
Ethics	14	23	22
Open Meetings	8	3	7
A.L.J. Code of Conduct	1	2	1
Contract Exemptions	5	7	5
Employment Exemptions	10	19	22
Property Exemptions		1	0
TOTAL:	38	55	57

Training - Public Servants and Lobbyists

YEAR	Number Trained
2009	1436
2010	1660
2011	2047

The following is an overview of Advisory Opinions issued by the Commission in 2011.



AO 2011-01 County Council Member - County Council Member's business may appraise estates so long she recuses herself from any matters coming before the County Council involving the probate of any estate her business has appraised. County Council Member's business may not appraise any estates over which the Sheriff has been appointed by the County Council as the administrator. County Council Member's business should be removed from the Fiduciary Supervisor's list of available appraisers. County Council Member may not appear, as a representative or witness, before the Council, either about the appraised value, or the amount of her compensation. County Council Member may not accept protected persons from the Sheriff for placement in her nursing home, absent a contract exemption for the Sheriff.

AO 2011-02 County Council Member - County Council Member's business may contract with a multi-county Conservation District under the following circumstances:

- (1) the contract is let via a sealed bid process;
 - (2) the project is not funded by County money;
 - (3) the project is not the subject of an agreement between the District and the County including any agreement for flood control as authorized by W.Va. Code § 19-21A-13 ;
- and,
- (4) the affected Member recuses himself from the District's appropriation request or any request for funding.

Opinion does **not** authorize the employment of County Commissioners or County Council Members, their spouses or dependents, by Conservation Districts in the County where they serve.

AO 2011-03 County Hospital - County Hospital, whose members are appointed by the County Commission, may modify an existing contract with a city-owned hospital that employs a County Commissioner. The city-owned hospital is located in another county. The County Commissioner may not use his position to influence the award of the contract. Additionally, if a matter relating to the subject contract comes before the County Commission, the County Commissioner/city-owned hospital employee should recuse himself from voting.

AO 2011-04 Per Diem Legislative Attorney - Per Diem Legislative Attorney, who is not, on July 1, 2011, a Legislative employee as defined by the Internal Revenue Service, is not subject to the newly enacted revolving door prohibition, W.Va. Code § 6B-3-2. Independent contractors are not covered by the Ethics Act. Agencies are permitted to impose stricter standards than set forth in the Ethics Act.

AO 2011-05 University President – A Public University may spend public funds to pay membership dues for the President, but not the President’s spouse, to join the local Rotary club. Public funds may only be spent for President’s membership dues (and one-time new member fee), not on meals or any other cost or fee associated with Rotary membership, such as contributions to a related philanthropic organization. Ethics Act does not prohibit the University Foundation—a separate, non-government entity—from paying for the spouse’s membership in Rotary and/or for paying for meals associated with Rotary meetings or functions for the President and/or the President’s spouse. Higher Education exemption available only when the activity has been approved as part of the employment contract.

AO 2011-06 County Public Service District Member - An appointed board member, who in his private capacity has participated in other rate cases related to a particular utility company, may not participate in the PSD’s deliberations and actions related to the PSD’s role in the West Virginia Public Service Commission’s investigation of that utility company. Although not expressly prohibited by the voting provision of the Ethics Act since he is a member of a class of five or more, the member’s membership in the Home Owners Association, as well as his representative advocacy on its behalf, constitute a personal interest. There could be an appearance that the member is using the PSD to bring suit in the District’s name for his personal benefit, thus constituting the prohibited use of public office for private gain. This is a non-precedential opinion.

AO 2011-08 Part-Time Prosecuting Attorney – Elected Part-Time Prosecuting Attorneys may continue to use office space in their respective county courthouses for their private law practices without reimbursing the County for the pro-rata rental value thereof. Elected Part-Time Prosecuting Attorneys may continue to use public resources, including office equipment and staff in their respective county courthouses for their private law practices, but must reimburse the County for the pro-rata rental

value thereof, or make direct payment for such equipment and/or services. Assistant Prosecuting Attorneys may not use courthouse office space, equipment, supplies or staff for their private law practices. Overrules AOs 89-15, 89-27 and 91-61.

AO 2011-09 County Hospital - County Hospital may accept unsolicited offer of equipment and related services from appointed board member. County Hospital may accept unsolicited offer of real property from appointed board member so long as: there are no financial conditions associated with the property transfer; and the body notifies the public of the member's offer and allows other property owners the opportunity to offer their property for consideration. County Hospital may accept unsolicited offer of real property from appointed board member even if there are unresolved issues requiring mitigation (e.g. environmental hazards, or outstanding liens), but only if an independent evaluation determines that the overriding benefit is to the governing body rather than the donor and it receives permission from the Ethics Commission.

AO 2011-10 County Board of Education (BOE) - Spouse of county BOE Superintendent may not be employed as Director of Student Services, a prohibited administrative position under W. Va. Code § 61-10-15. Spouse of county BOE Superintendent may be employed as School Psychologist, a position that meets the exception in W. Va. Code § 61-10-15. Spouse of county BOE Superintendent may continue to be physically located in the central office without violating W. Va. Code § 61-10-15. The nature of the work performed, not location, is outcome determinative. Superintendent may not use position to obtain, increase or promote the interests of spouse as a BOE employee.

AO 2011-11 State Agency - May accept funds for its Recreation Department, pursuant to its enabling legislation. May solicit funds for its Recreation Department, under certain conditions: solicitation must benefit residents, not public servants; may not endorse a donor business; must comply with Legislative Rule if soliciting vendors; may not solicit a subordinate or Agency client; and may not use Agency clients to solicit.

AO 2011-12 Town Attorney - Town's elected officials may vote to appropriate funds to a non-profit organization on which they and/or their family members serve as uncompensated board members and/or officers. Overrules portion of AO 2010-04 wherein uncompensated member of a non-profit board was prohibited from voting as a member of the Board of Education.

AO 2011-13 State Agency - Public funds may not be spent to pay for health club or gym fees for public servants in travel status when the hotel does not provide free exercise facilities to lodgers. Public servants who receive an expense-paid trip to participate in a conference may not accept payment or reimbursement for health club or gym fees, when the hotel does not provide free exercise facilities to lodgers, and the total value of the fees exceeds \$25. Public servants who participate in a conference or event as a panelist or speaker may not accept payment or reimbursement for health club or gym fees when the hotel does not provide free exercise facilities to lodgers.

AO 2011-14 Candidate for County Assessor - May **not** continue career as owner and broker of real estate business within county where he will serve, if elected. May continue career as owner and broker of real estate business in other counties so long as he does not: use his official position in any way that would give him an advantage; conduct his business on county time; or use county resources (including staff) to conduct his private real estate business.

AO 2011-15 An Appointed Member of a Board of Health - An Appointed Member of a Board of Health who is the past president of a fraternal organization which sued the Board of Health is required to recuse himself from being involved in deliberations or votes relating to the lawsuit. An Appointed Member of a Board of Health who has business interests affected by the Board of Health regulations may vote on regulations or policies which govern smoking in public places. The fact that he is a member and/or officer of an organization which has an interest in Clean Air regulations does not prohibit him from voting on the Clean Air regulations as five or more such organizations are affected.

AO 2011-16 An Appointed Member of a Board of Health - An Appointed Member of a Board of Health who is a member of a fraternal order which belongs to a fraternal organization which sued the Board of Health is required to recuse herself from being involved in deliberations or votes relating to the lawsuit. An Appointed Member of a Board of Health who is a member of a non-profit fraternal order which has an interest in Board of Health regulations may vote on Clean Air Regulations or other policies. The member does not have a financial interest in the fraternal order, and does not need to recuse herself.

AO 2011-17 State Licensing Board - Executive Directors and Members of the Board may be members of professional associations consisting of licensees which the Boards regulate. Members may be officers of professional associations consisting of licensees which the Boards regulate, with limitations. Executive Director may **not** be an officer of or employed by a professional association consisting of licensees which the Board regulates.

AO 2011-18 State Council - Industry representatives on the governing council of a state agency may not serve on the initial review panel for grant applications and may not serve on the committee to draft legislative rules relating to the award of grants. They may participate as members of the council, and vote on the approval of recommended grant applications, absent a prohibited interest necessitating recusal.

AO 2011-19 A State Licensing Board - May spend public funds to hire registered lobbyist, to serve as a Legislative liaison. Registered lobbyist retained by a public agency as Legislative liaison must register as a lobbyist for the Board.

AO 2011-20 An Elected County Commissioner - May purchase tax liens at a Sheriff's sale or through the State Auditor's Office, or both, when County Commissioner had no direct involvement in the assessment of property; however, a County Commissioner

may not purchase a tax lien on property for which owner requested adjustment of assessed value or other relief from County Commission or board of equalization and review.

AO 2011-21 A City - May adopt ordinance or change charter to compensate Mayor at flat rate of pay for extra duties not statutorily required of the Mayor; provided, that the ordinance becomes effective for the next term of office.

Contract Exemptions

CE 2011-01 Wetzel County Commission - Granted a contract exemption to allow it to continue an agreement whereby the part-time County Prosecutor will provide office space, internet services, a receptionist, and other administrative services at no cost to the County; and in return, the Prosecutor will be allowed to use the County-owned copier without payment to the County.

CE 2011-02 Guyan Conservation District - Granted a contract exemption, effective until October 6, 2013, to allow it to continue to use the Putnam County Bank as the depository for two certificates of deposit even though one of its elected Board Members, Boyd Meadows, serves on the bank's Board of Directors, and is a stockholder therein, under following conditions:

1. Member Meadows must recuse himself from all bank related matters; and
2. This exemption is strictly limited to the referenced certificates of deposit.

CE 2011-03 Webster County Commission - Denied a three year exemption as requested because County Commission failed to provide any information about the availability of other existing office space or any proof of excessive cost, undue hardship, or other substantial interference with governmental operations. Granted a renewed temporary exemption to allow the County Commission adequate time to find new office space or, in the alternative, if its diligent search for other appropriate office space is unsuccessful, to submit a new exemption request to allow it to continue to rent office space from the County Prosecutor to house the Prosecuting Attorney's office. (expires January 15, 2012)

CE 2011-04 Town of Ridgeley - Granted temporary exemption to allow the Mayor's wife to be compensated for performing services for the Town, on a temporary basis. (Expires 1/1/12)

Open Meetings Opinions

OMAO 2011-02 Raleigh County Commission – A meeting of a quorum of county commission members with staff constitutes a meeting under Act.

OMAO 2011-03 Clarksburg City Council - Act requires a meeting agenda to include all items that require official action that the Council will discuss at that meeting, even if the governing body does not take official action at that meeting.

OMAO 2011-04 West Virginia Industrial Council - Procedural rule authorizing governing body to call a meeting upon the request of a quorum thereof does not violate Act's prohibition against discussions of quorum outside a publicly noticed meeting. Discussion by a quorum concerning calling a meeting shall be limited to the logistics thereof, and not the substance of the topic of the proposed meeting.

OMAO 2011-05 West Virginia State Epidemiological Workgroup - Workgroup housed within public agency, formally established to assist state agency in making data informed decisions, whose members represent numerous public entities, constitutes a governing body under the Act.

OMAO 2011-06 Hardy County Rural Development Authority - Quorum of county commissioners may serve on County Development Authority board only if both bodies notice the meeting.

OMAO 2011-07 Webster Springs Town Council - Mayor and recorder are members of the governing body of a municipality and are counted towards quorum unless a Town charter or ordinance provides that recorder and mayor are not permitted to vote.

School Board Advisory Opinions

S.B.A.O. 2010-01 - A Potential Board Member may simultaneously serve on the board of directors of a State Community College and the County Board of Education.

Administrative Law Judge Code of Conduct

ALJAO 2011-01 Code of Conduct for Administrative Law Judges prohibits an Administrative Law Judge from traveling to and from hearings with members of the agency when the agency is a party to the underlying complaint.

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 2011 there were eleven (11) conciliation agreements approved by the Commission. There was one public hearing before an Administrative Law Judge (ALJ) which resulted in a finding that the Respondent, a former Mayor, had violated the Ethics Act.

Verified Complaints

Year	Total Filed	Commission Initiated (of total filed)
2010	42	6
2011	51	3

Informal Complaints

YEAR	Received
2009	78
2010	63
2011	54

Conciliation Agreements Approved in 2011

VCRB 2009-01 Re: City Council Member

Relevant Facts: City awarded a contract to his son-in-law's landscaping business in which Respondent had a financial interest. In particular, he had pledged \$100,000.00 to secure a letter of credit for the business.

The City uses a sealed bid process in awarding City contracts, awarding contracts to the lowest bidder. Respondent attended a non-mandatory pre-bid meeting on behalf of the landscaping business. Respondent maintained that he attended the pre-bid meeting with the intent of getting more competitive bids on behalf of City. The City awarded the contract to the subject landscaping business as the lowest bidder. Respondent voted on matters directly affecting the financial interest of the business, including the award of the landscaping contract.

Respondent had also been member of a Development Association, which had been funded by City, for fifteen (15) years before his election to City Council. Three weeks before taking office, Respondent loaned Seven Thousand Dollars (\$7,000) to the Association. Before the loan was repaid, Respondent advocated for City to fund the Association despite his financial interest. He also served as the Association's unpaid executive director at the time.

Respondent is no longer a member of the City Council, having lost a re-election bid.

A public official is prohibited from using his or her office for private gain. W. Va. Code §6B-2-5(b). A public official is prohibited from having an interest in a public contract. W. Va. Code §6B-2-5(d). A public official may not vote on a matter in which s/he, an immediate family member, or a business with which s/he or an immediate family member is associated, has a financial interest. W. Va. Code §6B-2-5(j)(1).

Conciliation Agreement: On July 5, 2011, in consideration for the settlement and resolution of this matter, Respondent agreed to the imposition of the following

sanctions: (1) Public Reprimand; and (2) Pay a fine of Three Thousand Dollars (\$3,000).

VCRB 2009-07 Re: County Tax Deputy of Sheriff's Department

Relevant Facts: The Sheriff's department had annual Christmas luncheons in 2006 and 2007. A representative of a bank with whom the county did business offered for the bank to donate to the Sheriff's Department an amount to cover Christmas party expenses. The Respondent accepted the offers and sent invoices to the bank. The bank submitted payment to the Sheriff's Office. The Respondent denied knowing this was a violation of the Ethics Act.

W. Va. Code §6B-2-5(c) prohibits a public employee from soliciting or accepting any gift except one made for charitable purposes. No official or employee may knowingly accept any gift from any person he has reason to know is doing business with his agency.

Conciliation Agreement: On July 14, 2011, in consideration for the settlement and resolution of this matter, Respondent agreed to the imposition of the following sanctions: (1) Cease and desist from soliciting and or accepting donations or other gifts prohibited by the Ethics Act; (2) Pay a fine of \$100.00; (3) Donate (anonymously) \$500.00 to a food bank or shelter in the Huntington area; and (4) Attend training by the Ethics Commission Staff within 6 months.

VCRB 2010-05 Re: County Manager for County Commission

Relevant Facts: In the summer of 2008, Respondent played on AEP's golf team in a tournament. As a result of this relationship, Respondent received golf related gifts including free \$100 admittance to the tournament, a \$76.00 golf bag and golf card valued at \$350.00. Earlier that same year, AEP donated real estate from the county commission. The Respondent County Manager was a conduit for information throughout the donation process.

Also, at a time when the county commission had a business relationship with an architectural firm, the architectural firm provided free consultations to the Respondent concerning his home kitchen renovations. The firm also hired a structural engineer to advise the Respondent on his remodeling project. The firm paid \$890.00 for this service on behalf of the Respondent. Thereafter, the county commission was considering the firm for a project related to window replacement at the courthouse. Respondent served on a 4 member evaluation committee. Although the county commission had taken no action, Respondent drafted an acceptance letter to the firm. After this complaint was filed, Respondent voluntarily paid the firm the full cost of its services on the kitchen remodel. The county commission did not select any of the applicants for the window replacement project.

Last, Respondent received free admittance to county golf courses and failed to pay sales tax on clubs purchased through the county parks commission's account, and failed to reimburse the purchase price for one year.

A public official is prohibited from using his or her office for private gain. W. Va. Code §6B-2-5(b). W.Va. Code §6B-2-5(c) imposes limitations on the solicitation and acceptance of gifts. Public official may not accept a gift/s exceeding \$25.00 in a calendar year from an interested party which includes persons he has reason to know are conducting business with his agency.

Conciliation Agreement: On October 14, 2011, in consideration for the settlement and resolution of this matter, Respondent agreed to the imposition of the following sanctions: (1) a public reprimand from soliciting and or accepting donations or other gifts prohibited by the Ethics Act; (2) Pay a fine of \$5000.00; (3) Pay restitution in the amount \$3,365.44 to the architectural firm and the county. (Some of the money had been voluntarily paid after the investigation had commenced but prior to the signing of the Conciliation Agreement).

VCRB 2010-13 Re: County Board of Education Member

Relevant Facts: During a BOE meeting on February 3, 2010, Respondent did not recuse himself from discussion relating to property in which he had a personal financial interest. The matter at issue was an old log school house with significant historical value. There was a dispute as to whether the school building was owned by the BOE or the County Commission. The Respondent discussed his personal interest in acquiring the school and advocated for taking possession and ownership of it at a BOE meeting.

If a public official or employee has an interest in the profits of a contract, then he may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his financial or limited financial interest. W. Va. Code §6B-2-5(d)(3). Public officials may not vote on a matter in which they, an immediate family member, or a business with which they or an immediate family member is associated, has a financial interest. For a public official's recusal to be effective it is necessary to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during the period, fully disclosing his interests, and recusing himself from voting on the issue. W. Va. Code §6B-2-5(j).

Conciliation Agreement: On February 3, 2011, in consideration for the settlement and resolution of this matter, Respondent agreed to (1) Attend a training seminar on the Open Meetings Act and the Ethics Act offered by the Ethics Commission and (2) Pay the Ethics Commission a fine of One Hundred dollars (\$100).

Re: VCRB 2010-14: County Board of Education Member

Relevant Facts: Respondent's wife interviewed for a vacant Assistant Principal (AP) position advertised by the BOE. Respondent admitted that he was present during some board meetings where discussions and votes occurred regarding the applicants and

requirements for the position. Respondent denies knowing that his involvement did not meet the recusal requirements in the Ethics Act and that in matters concerning the spouses of other BOE members, a similar, albeit improper, practice was employed. Respondent maintained that he did not attend any meeting which specifically concerned the hiring of his wife. The evidence was inconclusive in regard to the effect of the Respondent's presence during the relevant meetings in question.

A public official or public employee may not knowingly and intentionally use his office or the prestige of his office for his own private gain or that of another person. W.Va. Code §6B-2-5(b). A public official or public employee may not vote on a personnel matter involving the public official's spouse or relative. W.Va. Code §6B-2-5(j)(1)(C). For a public official's recusal to be effective, it is necessary to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during the period, fully disclosing his interests, and recusing himself from voting on the issue. W.Va. Code §6B-2-5(j)(3).

Conciliation Agreement: On July 14, 2011, in consideration for the settlement and resolution of this matter, Respondent agreed to pay a fine of One Hundred dollars (\$100) as a sanction. (Respondent is no longer a member of BOE. Respondent's wife resigned from the AP position following the 2009-10 school year.)

VCRB 2010-15 Re: Town Employee/ Contract Snow Remover

Relevant Facts: Respondent engaged in the practice of performing snow removal contract work for two neighboring towns and billing the same work to both towns. Also, on at least one occurrence, Respondent received compensation for snow removal work while he was working on the clock as an employee for one of the towns.

A public official or public employee may not knowingly and intentionally use his public office for his own private use and gain. W.Va. Code § 6B-2-5(b). A public employee is prohibited from receiving additional compensation from another publically-funded governmental agency for working the same hours. W.Va. Code § 6B-2-5(l).

Conciliation Agreement: On May 5, 2011, in consideration for the settlement and resolution of this matter, the Respondent agreed to (1) Attend a training seminar on the Ethics Act prior to accepting any future employment with a public entity in West Virginia; and, (2) Pay a fine of Two Hundred and Fifty dollars (\$250) to the Ethics Commission within thirty (30) days of the entrance of the order. (Prior to this agreement, Respondent pled no contest to two (2) misdemeanor counts of petit larceny as a result of his conduct and Respondent lost both his employment with the town and his snow removal contracts.) Restitution was not desired by the towns.

Re: VCRB 2010-15 Re: Town Employee

Relevant Facts: Respondent falsified time sheets and received unearned pay. Respondent admitted to claiming too many work hours on her time sheet for the time period of April 4-9, 2010 totaling five (5) hours of unearned work resulting in an overpayment of Eighty dollars (\$80).

A public official or public employee may not knowingly and intentionally use his public office for his own private use and gain. W.Va. Code §6B-2-5(b).

Conciliation Agreement: On February 3, 2011, Respondent agreed to (1) Pay the Town Eighty dollars (\$80) as restitution for claiming work hours in excess of the hours actually worked within Thirty (30) days of the entrance of the Order; and (2) Pay the Ethics Commission a fine of One Hundred dollars (\$100) within Thirty (30) days of the entrance of the Order. (As a result of the allegations contained within Complaint VCRB #2010-15, Respondent was forced to resign and/or terminated from her employment with the Town by which she was employed.)

Re: VCRB 2010-15 Re: Town Administrator

Relevant Facts: The Complaint alleges that Respondent violated the Ethics Act by: placing her sister (not a town employee) on the town's Sam's Club membership account; showing favoritism to her brother-in-law and/or his business by improperly awarding him snow removal contracts for the past three (3) years and paying him an excessive hourly rate; awarding yearly snow removal contracts to an individual/business, which she failed to place out to bid; and last, by purchasing town vehicles from and having them serviced by a car dealership, her ex-husband's employer during a period she was cohabitating with him.

Investigation revealed that Respondent placed her sister on the town's Sam's Club account in 2000 with permission of the then-mayor. Respondent stated that her sister had paid her cash to reimburse Town for membership fees but that she had forgotten to pay the most recent fees and no records exist to support such an arrangement.

The remaining allegations were not substantiated or occurred outside of the statute of limitations.

A public official or public employee may not knowingly and intentionally use her public office for her own private use or gain. W.Va. Code §6B-2-5(b). In Advisory Opinion #2010-18, the Ethics Commission held that a town employee cannot receive a Sam's Club membership as a valid fringe benefit even if there is no additional cost to the Town.

Conciliation Agreement: On July 14, 2011, in consideration for the settlement and resolution of this matter, Respondent agreed to (1) Public reprimand for using her public employment for the financial gain of another; (2) Pay the Town of Harpers Ferry Seventy dollars (\$70) representing two years of Sam's Club membership fees for the card used by her sister; (3) Pay the Ethics Commission a fine of Two Hundred (\$200) to be paid within thirty (30) days of the entrance of the Order.

VCRB 2010-08 Re: City Clerk

Relevant Facts: At the direction of the Mayor, Respondent reimbursed costs to Mayor of unauthorized meals; vehicle mileage and use; personal telephone.

A public official or public employee may not knowingly and intentionally use her public office for her own private use or gain. W.Va. Code §6B-2-5(b).

Conciliation Agreement: On January 19, 2011, in consideration for the settlement and resolution of this matter, the Respondent agreed to (1) Cease and desist from assisting the expenditure of public funds for unauthorized personal expenses, should he hold public office or employment in the future; (2) Pay the Ethics Commission a fine of Two Hundred and Fifty dollars (\$2,500.00) within thirty (30) days of the entrance of the Order.

VCRB 2010-18 Re: Mayor

Relevant Facts: City issued Respondent a City credit card. According to Respondent, City's previous mayor had such a card as well as City's Administrator/Treasurer. City never defined limitations regarding use of the card. Respondent assumed that he could make personal transactions with the card as long as he used his own funds to pay the bill. Upon receipt of the card, Respondent made arrangements for bills to be sent to his home address. Respondent paid at least the minimum payment due and related fees every month with his own funds. Respondent acknowledged that by not paying the full amount of the bill each month that he could have adversely affected City's credit rating. No evidence existed to show that public funds were used to make any payment related to Respondent's use of the card. The Ethics Commission maintained that, but for his position, Respondent would not have had access to the use of the City credit card. As a result, by virtue of his public position, he enjoyed use of a credit card that was unavailable to average citizens.

A public official or public employee may not knowingly and intentionally use her public office for her own private use or gain. W.Va. Code § 6B-2-5(b).

Conciliation Agreement: On January 19, 2011, in consideration for the settlement and resolution of this matter, the Respondent agreed to (1) Cease and Desist from using any City credit card for his personal transactions; (2) Comply with the relevant policies and procedures when using the City's Purchasing card issued by the State of West Virginia; (3) Pay the Ethics Commission a fine of Two Hundred and Fifty dollars (\$250.00) within thirty (30) days of the entrance of the Order.

VCRB 2010-23 Re: Mayor

RELEVANT FACTS:

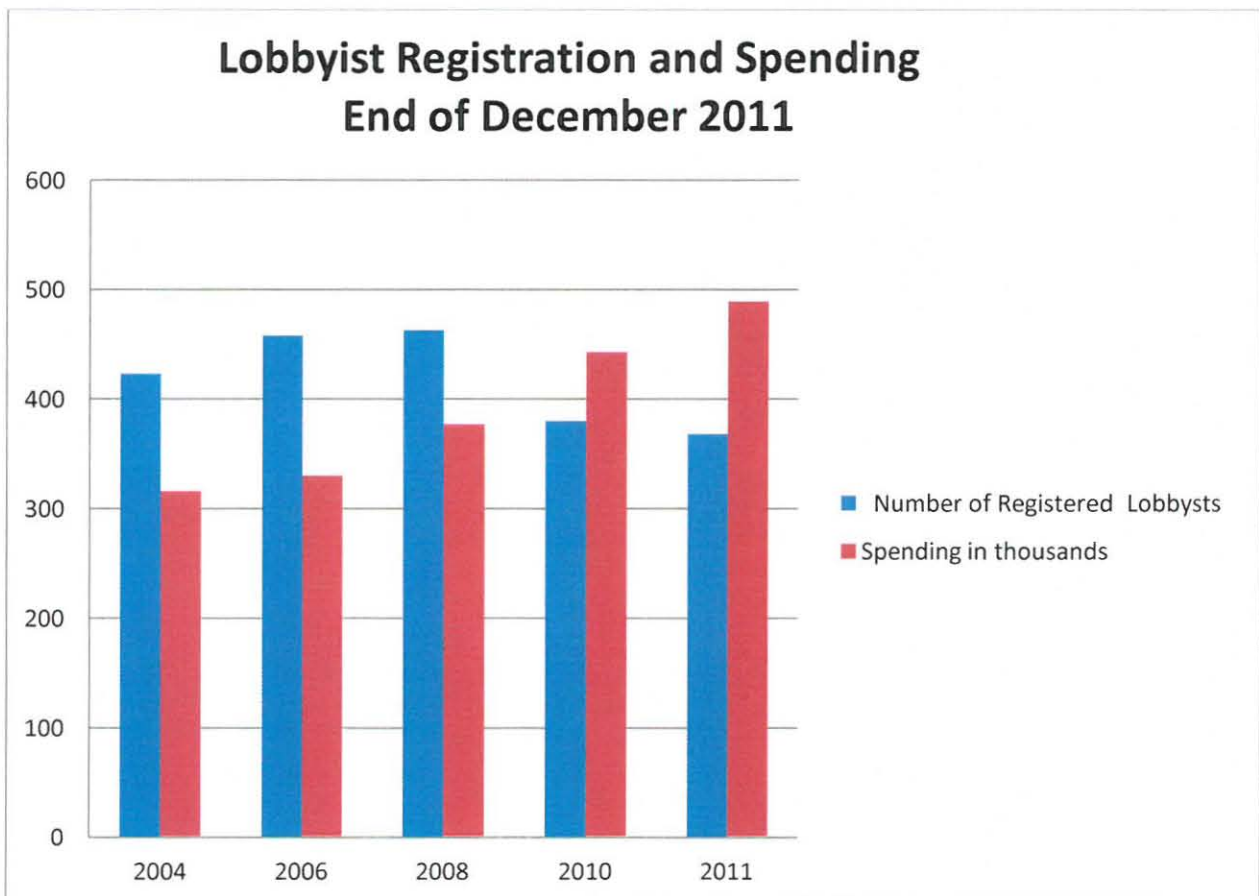
The complaint alleged that a Mayor used a town employee to perform personal work while the employee was being paid to work for the town. More specifically, it was alleged that the Mayor required the employee, a town clerk/secretary, to type documents for his use as a history professor at a college. It was alleged that the Respondent used his office for private gain.

Conciliation Agreement: On April 7, 2011, in consideration for the settlement and resolution of this matter, the Commission imposed the following agreed-to sanctions: (1) An order of Restitution for money, things of value, or services taken or received in violation of this chapter, in the amount of \$825.50 and, (2) A fine in the amount of \$500.00.

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 2011 there were 334 active registered lobbyists.

The following is an overview of the number of lobbyists registered and their spending for the years 2004, 2006, 2008, 2010 and 2011.



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 financial disclosure statements 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 2011, there were 3,114 forms filed with the Commission.

CONCLUSION

In 2011 the Commission continued its outreach and education efforts. As part of these efforts it created a new lobbyist training video and trained, in-person, 2047 public servants and lobbyists. Based upon information and belief, this figure represents the greatest number trained in one year in Commission history.

Further, the Commission proposed Legislation to strengthen the Ethics Act by requiring the disclosure of additional information on financial disclosure statements and 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. This Bill, H. B. 2464, passed during the 2011 Legislative Session, effective July 1, 2011.