

**MINUTES OF THE APRIL 3, 2014  
MEETING OF THE WEST VIRGINIA ETHICS COMMISSION**

The April 3, 2014 meeting of the West Virginia Ethics Commission was called to order in the Commission's Office, located at 210 Brooks Street, Charleston, WV at 10:00 a.m. by Chairperson Kemp Morton. Present and in person were Commissioners Betty Ireland, Suzan Singleton, Fr. Douglas Sutton, and Bob Wolfe. Commissioners Michael Greer, Drema Radford, and Terry Walker participated by telephone. Absent were Commissioner Jack Buckalew and Monté Williams. Executive Director C. Joan Parker, General Counsel Kimberly Weber, Deputy General Counsel Meridith Johnstone, Staff Attorney Ben Visnic, Contract Employee Lucy Suchy, and Administrative Secretary Kimberly Pickens from the Commission staff were also present.

WHEREUPON, Chairperson Morton asked for approval of the March 6, 2014 Commission meeting minutes.

WHEREUPON, Commissioner Fr. Sutton made a motion to approve the minutes. Commissioner Ireland seconded. The motion passed unanimously.

WHEREUPON, Chairperson Morton announced that the next Commission meeting would be held May 1, 2014 at 10:00 a.m. at the Ethics Commission Office, 210 Brooks St., Charleston, WV 25301.

WHEREUPON, Chairperson Morton called upon Ms. Parker to give a recap of the previous month.

WHEREUPON, Ms. Parker provided a status update on the candidates required to file a Financial Disclosure Statement. A press release was sent to the Secretary of State and county clerks to assist in contacting delinquent filers. The mailing day for Commission meeting packets has changed from the Friday to the Thursday before the meeting to ensure that commissioners receive their packets in a timely manner. There were no training sessions in March.

WHEREUPON, Chairperson Morton called upon Ms. Parker to present Advisory Opinion 2014-11.

WHEREUPON, Ms. Parker presented Advisory Opinion 2014-11 to the Commission for consideration. After discussion, Commissioner Fr. Sutton made a motion to approve Advisory Opinion 2014-11 and Commissioner Ireland seconded. The motion passed unanimously.

WHEREUPON, Chairperson Morton called upon Ms. Parker to present Advisory Opinion 2014-12.

WHEREUPON, Ms. Parker presented Advisory Opinion 2014-12 to the Commission for consideration. After lengthy discussion, Commissioner Sutton made a motion to adopt an advisory opinion that rules that the answer to the question presented is "no" and Commissioner Ireland seconded. The motion passed unanimously. Staff was further directed to open an informal inquiry into the matter.

WHEREUPON, Chairperson Morton called upon Ms. Parker to present Advisory Opinion 2014-13.

WHEREUPON, Ms. Parker presented Advisory Opinion 2014-13 to the Commission for consideration. After discussion, Commissioner Wolfe made a motion to approve Advisory Opinion 2014-13 and Commissioner Singleton seconded. The motion passed unanimously.

WHEREUPON, Chairperson Morton called upon Ms. Weber to present Advisory Opinion 2014-14.

WHEREUPON, Ms. Weber presented Advisory Opinion 2014-14 to the Commission for consideration. After discussion, Commissioner Singleton made a motion to approve Advisory Opinion 2014-14 and Commissioner Ireland seconded. The motion passed unanimously.

WHEREUPON, Chairperson Morton called upon Ms. Weber to present Advisory Opinion 2014-15.

WHEREUPON, Ms. Weber presented the revised Advisory Opinion 2014-15 to the Commission for consideration. After discussion and a presentation from the interested party's agency head, Commissioner Fr. Sutton made a motion to approve Advisory Opinion 2014-15 and Commissioner Singleton seconded. The motion passed unanimously.

WHEREUPON, there were no Contract Exemption Requests.

WHEREUPON, there were no School Board Advisory Opinion Requests.

WHEREUPON, there were no Property Exemption Requests.

WHEREUPON, Chairperson Morton called upon Ms. Parker to present Employment Exemption Request 2014-03.

WHEREUPON, Ms. Parker presented Employment Exemption Request 2014-03 requested by Hallie Mason to the Commission for consideration. After discussion, Commissioner Ireland made a motion to approve Employment Exemption Request 2014-03 and Commissioner Wolfe seconded. The motion passed unanimously.

WHEREUPON, Chairperson Morton called upon Ms. Parker to present miscellaneous matters.

WHEREUPON, the Commission reviewed the P-Card report with no comments.

WHEREUPON, Ms. Parker provided an overview of newly-passed legislation affecting the Ethics Act. SB 365 passed, but did not amend the Ethics Act as originally drafted. Instead, the bill amends the specific legislation relating to Conservation Supervisors.

HB 4298, however, significantly amends the Ethics Act. It reduced the size of the Commission from 12 to nine members, and designated one slot for a member from a "rural area". The at-large positions were renamed "citizen members". Although HB

4298 goes into effect on June 6, 2014, W. Va. Code § 6B-2-1(c) states as follows: "Commencing July 1, 2014, the Ethics Commission shall consist of the following nine members...." Further, subsection (d) states that existing members who meet the eligibility requirements may be reappointed.

Subsection (k) reads: "(k) "The commission, as appointed on July 1, 2014, shall meet within thirty days of the initial appointments to the commission before August 1, 2014, at a time and place to be determined by the Governor, who shall designate a member to preside at that meeting until a chairman chairperson is elected." As a result, Ms. Parker suggested that the June Commission meeting be rescheduled to occur later in the month.

HB 4298 removed current language precluding a person "who is employed as a registered lobbyist" from those individuals who are prohibited from serving on the Ethics Commission. W. Va. Code § 6B-2-1(b)(2). The Ethics Act is now internally inconsistent because the Ethics Act precludes appointment of anyone who "is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the commission" (e.g., those it regulates, such as lobbyists.) W. Va. Code § 6B-2-1(b)(3)

In response to questions from various Commissioners, Ms. Parker advised that if any governor were to rely on the newly stricken language and appoint a registered lobbyist to the Commission, it could hold up the work of the Commission for months while resolving any legal challenges. She recounted advice that she had received from staff of the Senate Confirmation Committee when a new appointment caused there to be too many Commissioners from a particular Congressional district. Committee staff informed her that the Commission would be foreclosed from meeting and taking any action as long as there was an appointed member who was ineligible to serve.

Additionally, HB 4298 reduced the quorum to 5. Ms. Parker explained that this change creates a problem when the Commission acts upon complaints against Administrative Law Judges. The Ethics Commission's Committee on Standards of Conduct for Administrative Law Judges (ALJ Committee) first considers complaints and makes recommendations as an investigative panel. By Legislative Rule, the ALJ Committee consists of 3 commissioners and 2 alternates. If the Committee finds probable cause on an ALJ complaint, then the remaining Ethics Commission members act as the hearing board to adjudicate the case.

As written, requiring a quorum of 5 when hearing ALJ complaints will leave insufficient quorum to conduct the adjudication phase. Only 4 commission members will be left to act as the hearing board if all 5 members and alternates to the ALJ Committee are involved with a complaint. Although the Commission receives far fewer ALJ complaints than ethics complaints, it could still result in a due process issue if the Committee or the Commission were unable to act on even one for lack of a quorum.

WHEREUPON, Chairperson Morton asked for a motion to go into executive session to discuss personnel matters related to HB 4298. Commissioner Fr. Sutton made a motion to enter into executive session on the advice of counsel and Commissioner Singleton seconded. The motion passed unanimously.

WHEREUPON, Chairperson Morton advised that Ms. Suchy serve as a consultant during executive session.

WHEREUPON, Ms. Weber, Ms. Johnstone, Mr. Visnic, and Mrs. Pickens left the meeting.

WHEREUPON, the commissioners returned from executive session and Chairperson Morton announced that no votes were taken in executive session.

WHEREUPON, Ms. Weber, Ms. Johnstone, and Mrs. Pickens returned to the meeting.

WHEREUPON, Ms. Parker discussed budgetary matters.

WHEREUPON, Chairperson Morton left the meeting and appointed Commissioner Fr. Sutton to serve as Acting Chairperson.

WHEREUPON, Acting Chairperson Fr. Sutton stated there were no more items for discussion. Commissioner Ireland made a motion to adjourn and Commissioner Wolfe seconded. The meeting was adjourned.

The foregoing minutes of the West Virginia Ethics Commission were approved unanimously at the May 1, 2014 meeting.



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Father Douglas Sutton, Acting Chairperson  
West Virginia Ethics Commission

ATTEST:



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M. Ellen Briggs, Executive Assistant  
West Virginia Ethics Commission