

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

BRENT PAULEY

COMPLAINT NO. CIC 2010-05

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Brent Pauley freely and voluntarily enter into the following conciliation agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from the above-referenced Complaint.

FINDINGS OF FACT

The following facts are hereby stipulated and agreed upon by the West Virginia Ethics Commission and Brent Pauley (Respondent or Pauley), and are to be taken as true and correct:

1. At all times relevant herein, Pauley was the County Manager for the Kanawha County Commission. As County Manager, he was responsible for the day to day operations of the Kanawha County Commission.
2. In and shortly before 2008 American Electric Power Company (AEP) engaged in discussions with Kanawha County regarding the disposition of the old AEP building, located near the County's complex.
3. On April 24, 2008, the Kanawha County Commission voted unanimously to authorize its President to execute an Agreement to Donate Real Estate with AEP. AEP executed an Agreement to Donate Real Estate related to the subject building on May 2, 2008. The Deed transferring said real estate to the Kanawha County Commission was recorded on July 30, 2008. Pauley was a conduit for information throughout the process of the donation of the building.
4. AEP had financial interests with the Kanawha County Commission at certain times relevant to the matters herein during which times Pauley served as the County Manager.
5. On July 9, 2008, Pauley accepted an invitation from an AEP representative to play on AEP's team at the Pete Dye golf tournament Pro- Am. Pauley did not pay any fee to participate in the tournament, neither did he reimburse AEP for the value of the golf game, estimated at \$100.00

6. According to Callaway Golf, Inc., as a participant in the event, Pauley received a free stand Callaway golf bag (Callaway's cost \$76, fair market value unknown). Additionally, each participant received a Callaway gift card valued at \$350. Each gift card was assigned a tracking number which identified the participant. According to Callaway's records, Pauley's card number was 8504511690696767.

7. Pauley does not recall receiving and redeeming a gift card as a result of his participation in the tournament. Further, he disputes Callaway's value of the golf bag. Nevertheless, Pauley has donated it to a local charity.

8. Based on Pauley's assertions, the Ethics Commission investigator obtained independent confirmation of the allegations related to gifts. According to Callaway's records, card number 8504511690696767 was redeemed by someone using Pauley's address and email who ordered a shoe bag and rangefinder on August 22, 2008 through an order placed on Callaway's website. According to Callaway's representative, "The customer did provide an email address (bpauley@suddenlink.com) and would have received emails confirming order and upon shipment." Also, according to Callaway's records, the items were shipped on August 25 and September 9, 2008 to Pauley's home address.

9. Also in 2008, in anticipation of the acquisition of the old AEP building, Kanawha County had to renovate the building. Kanawha County eventually awarded the renovation design contract to Associated Architects.

10. At or about the time that Associated Architects performed the renovations on the old AEP building, Pauley was in the process of renovating the kitchen of his personal residence.

11. Subsequently, Associated Architects provided consultation to Pauley at no charge. The owner of Associated Architects asked a structural engineer to examine the kitchen remodel specifically as it related to removing a weight bearing wall. He also transported the structural engineer to the site on at least one occasion. The structural engineer provided engineering drawings and recommended that a laminated support beam be installed to support the roof.

12. Associated Architects did not charge Pauley for any services rendered. Further, Associated Architects paid the structural engineer \$890 for services rendered. Pauley was unaware that

Associated Architects had paid the structural engineer for his services.

13. Prior to the filing of this complaint, Pauley did not pay Associated Architects or the structural engineer, neither did he reimburse Associated Architects for having paid the structural engineer's fees, as Pauley was unaware of the same.

14. There is no evidence that Pauley demanded that these services be provided free of charge and no evidence that Associated Architects and/or the structural engineer felt pressured to provide the architectural and engineering services free of charge.

15. Prior to the filing of the formal complaint, Pauley voluntarily engaged in a meeting with the West Virginia Ethics Commission and disclosed the circumstances surrounding these facts and the names of persons who performed work on his home.

16. Pauley has contacted Associated Architects asking that he personally be invoiced for all time and expenses incurred by Associated Architects and any other firm who provided time and/or work on his kitchen remodel.

17. Pauley has received statements from Associated Architects, and other companies, and has made full payment in the amount of \$2,380.00 to these parties voluntarily, without requiring any order from the West Virginia Ethics Commission.

18. After Associated Architects consulted on Pauley's kitchen, the Kanawha County Commission released a solicitation for architectural services related to the replacement of windows in the County Courthouse. Pauley served on the County's four-member evaluation committee that considered the proposals from three firms, one of which was Associated Architects. Although the County Commission had not taken official action, Pauley prepared and signed a letter dated December 21, 2009 to Associated Architects stating that their firm had been selected to oversee the Kanawha County Courthouse & Judicial Building window replacement and HVAC upgrade project. Ultimately, the Kanawha County Commission did not select any of the three applicant firms.

19. Prior to the filing of the Complaint, Pauley expressed his desire to enter into a voluntary resolution of the instant complaint and offered to waive any statute of limitations that might exist under the statute relevant to these claims in order that the West Virginia Ethics Commission and he could have time

to voluntarily resolve these issues.

20. The Ethics Commission acknowledges Pauley's efforts to voluntarily resolve these issues, but out of an abundance of caution relative to the two year statute of limitations, decided to proceed with initiating a formal Complaint.

21. During the investigation of the instant complaint, the Ethics Commission has informally investigated an anonymous allegation that Pauley may have used the services of BBL Carlton to perform construction services on his kitchen remodel at the same time BBL Carlton was working on the AEP building for the Kanawha County Commission. The Ethics Commission has found no evidence to support this allegation. In fact, the evidence of a contract and canceled checks, all of which Pauley voluntarily submitted, shows that he had arms-length contracts with separate legal entities, and that he fully paid these companies to perform the work on his kitchen remodel at the time the services were rendered.

22. During the investigation of the instant complaint, the Ethics Commission has further informally investigated an allegation that Pauley may have used the government account of the Kanawha County Parks and Recreation Commission (KCPRC) to purchase golf clubs and related items from Callaway Golf on or about April 28, 2008. Pauley states that he provided his credit card number to the Callaway representative at that time. Subsequently, however, Jeff Hutchinson, Director of Kanawha County Parks and Recreation Commission (KCPRC), advised that the Callaway representative had billed KCPRC for Pauley's clubs without Pauley's knowledge. Upon notice thereof, Pauley immediately and voluntarily provided his personal credit card to Callaway for payment which was processed on April 25, 2009. Pauley was not charged \$35.44 in sales tax and voluntarily agreed to pay KCPRC for said uncollected sales tax.

23. During the investigation of the instant complaint, Pauley voluntarily disclosed that he had been provided a free pass from KCPRC to play golf, and that he believed other county employees had similar passes. According to Pauley, when he used the pass, he reported to the KCPRC his opinions concerning the condition of the course and its facilities and provided other feedback, as part of his job duties.

24. The Ethics Commission has reviewed evidence independently obtained in the course of

the investigation that contradicts Respondent's assertions in the foregoing paragraph. Specifically, by memo dated June 7, 2007, Kanawha County Commission President Kent Carper advised KCPRC not to provide courtesy golf passes to County employees; Pauley received a copy of this memo contemporaneously, but continued to use his golf pass until at or around the initiation of the instant complaint. Additionally, Pauley did not provide a copy of the memo to the Ethics Commission, nor did he apprise Ethics Commission staff of its existence during the investigation. Pauley has no recollection of said Memo, and without admitting any wrongdoing voluntarily agrees to pay KCPRC \$500.00 for golf played from 2007 to 2009.

25. During the course of the Ethics Commission's investigation, before and after the filing of the complaint, Pauley gave the appearance of minimizing his knowledge regarding certain matters.

26. Pauley is no longer employed by the Kanawha County Commission effective as of on or about September 30, 2010.

RELEVANT LEGAL PROVISIONS

West Virginia Code § 6B-2-5(b) provides, in relevant part, that a public official may not knowingly and intentionally use her or his office or the prestige of her or his office for her or his own private gain or that of another person.

West Virginia Code § 6B-2-5(c)(1)(A) states that, "no official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know: (a) is doing or seeking to do business of any kind with his or her agency."

CONCILIATION OF VIOLATION

I, Brent Pauley, former Kanawha County Manager, freely and voluntarily acknowledge that public officials should not use their public office for private gain. I further acknowledge that public officials should not accept gifts from interested persons, as set forth in the Ethics Act. Based upon my current knowledge and understanding of the West Virginia Ethics Act, I freely and voluntarily acknowledge that under the circumstances hereinabove set forth, I inadvertently violated the Ethics Act.

In my defense, there is no evidence that I intended to take advantage of the relationship between the Kanawha County Commission and Associated Architects, Inc. Nevertheless, I now realize that

improper intent is not required by the statute and that an employee who knowingly accepts any gift with an individual or company doing business with the Kanawha County Commission violates the Ethics Act.

In order to resolve this matter, I enter into this Agreement. By signing this Agreement, I agree to the imposition of sanctions by the West Virginia Ethics Commission. For this Conciliation Agreement to be finalized, the Ethics Commission must approve the Agreement and must further determine which sanctions to impose. In consideration for the settlement of this matter, I agree to the Ethics Commission's imposition of the following sanctions:

- (1) Public Reprimand;
- (2) Restitution in the amount of \$3,365.44, payable as follows:
 - a. \$450.00 to the Kanawha County Commission representing the value of participating in the golf tournament;
 - b. \$2,380.00 to Associated Architects for consulting on work done on kitchen; and
 - c. \$535.44 to KPRC for uncollected sales tax on golf clubs and golf from 2007-2009.
- (3) Fine not to exceed \$5,000.00.

By signing this Agreement, I hereby acknowledge and agree that the Ethics Commission will impose only the sanctions listed above.

As part of the consideration of this Agreement, Pauley and the West Virginia Ethics Commission stipulate that this agreement completely resolves each allegation expressly set forth in the instant complaint and in the Findings of Fact herein, notwithstanding the fact that they may not necessarily be expressly set forth in the instant complaint.

Pauley agrees to cooperate with the Ethics Commission regarding any ongoing investigation.

As consideration for this Agreement, and as agreed to by the parties, Pauley and his legal counsel will be afforded the opportunity to make an appearance before the Ethics Commission in an adjudicatory session prior to the Ethics Commission making a determination as to which sanctions are appropriate based upon the applicable facts and circumstances.

It is further agreed that if the Ethics Commission fails to approve this Conciliation Agreement, then this Conciliation Agreement is null and void and the complaint will be referred back to the Probable Cause Review Board where the Complaint will continue to be processed in accordance with the West

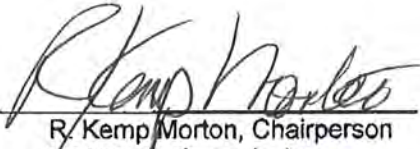
Virginia Code and the Ethics Commission's Legislative Rules. Further, Pauley hereby acknowledges that he understands that if the Ethics Commission fails to approve this Conciliation Agreement, staff will request that the Ethics Commission initiate a new complaint against him concerning any or all of the allegations identified herein, including, without limitation, knowingly providing false and misleading information to the Ethics Commission.

If the Ethics Commission approves the agreement, it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above.

I understand that pursuant to West Virginia Code § 6B-2-4(s) that the Conciliation Agreement and the Ethics Commission Order must be made available to the public.

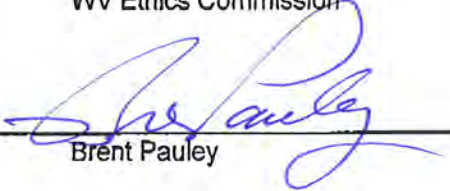
Date:

11/03/11


R. Kemp Morton, Chairperson
WV Ethics Commission

Date:

10/14/11


Brent Pauley

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE: Brent Pauley, Former Kanawha County Manager; CIC 2010-05

COMMISSION'S ORDER

After considering the foregoing FINDINGS OF FACT, RELEVANT LEGAL PROVISIONS and CONCILIATION OF VIOLATION, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and the Respondent, as required by West Virginia Code § 6B-2-4(s). In accordance with West Virginia Code § 6B-2-4(r) and the terms of the Conciliation Agreement, the Commission imposes the following sanctions:

- (1) The West Virginia Ethics Commission hereby **Orders** that former Kanawha County Manager Brent Pauley, should be, and hereby is, **publicly reprimanded** for using his public position for private gain;
- (2) The West Virginia Ethics Commission hereby **Orders** Respondent Brent Pauley to pay a **\$5,000.00** fine, payable to the West Virginia Ethics Commission. The fine is to be paid within thirty (30) days of the entrance of this Order; and
- (3) The West Virginia Ethics Commission hereby **Orders** Respondent Brent Pauley to pay restitution in the amount of \$3,365.44, payable as follows:
 - a. \$450 to the Kanawha County Commission representing the value of participating in the golf tournament, the complimentary golf bag and the \$350 gift card;
 - b. \$2,380.00 to Associated Architects for consulting on work done on Pauley's kitchen (which Mr. Pauley has already paid); and
 - c. \$535.44 to KCPRC for uncollected sales tax on golf clubs and free golf from 2007-2009.

Date: November 3, 2011


R. Kemp Morton, Chairperson
West Virginia Ethics Commission