



STATE OF WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION
210 Brooks Street, Suite 300
Charleston, West Virginia 25301-1838
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ethics@wv.gov • www.ethics.wv.gov

June 10, 2015

Mr. Earl R. Burks
15 Davis Drive
Hurricane, WV 25526

Re: CIC 2014-001, Earl R. Burks

Dear Mr. Burks:

This will confirm that you have fulfilled all of your obligations under the Conciliation Agreement dated August 7, 2014. Accordingly, the above-referenced ethics Complaint will be closed.

You provided written confirmation that you viewed the Ethics Commission training DVD as required by your Conciliation Agreement. You also have paid the \$1,000 fine required by the Agreement.

Thank you for your cooperation in fulfilling these requirements.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca L. Stepto".

Rebecca L. Stepto
Executive Director

RLS/erw

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:
EARL R. BURKS

COMPLAINT NO. CIC 2014-01

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Earl R. Burks 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 allegations in the above-referenced Complaint.

FINDINGS OF FACT

1. Respondent Earl R. Burks served, at all pertinent times herein, as an employee of the Union Public Service District ("PSD"). The PSD is a public corporation established by the Kanawha County Commission with approval of the West Virginia Public Service Commission. The PSD manages the development and maintenance of water, sewage and gas systems covering areas specified by the Kanawha County Commission.
2. The PSD entered into a construction contract with Breckenridge Construction Company of Buckhannon, West Virginia, in July 2009, for the upgrade and revitalization of the PSD's 40th Street Wastewater Treatment Plant ("40th Street Plant").
3. The construction at the 40th Street Plant was completed in or about July 2011.
4. Certain items owned by the PSD and being replaced with new equipment as part of the construction project were moved to the PSD's Rocky Fork Wastewater Treatment Plant ("Rocky Fork Plant") during the construction at the 40th Street Plant.
5. This equipment included a John Deere generator and a Flygt submersible pump.

6. The John Deere generator and the Flygt submersible pump, along with other equipment, were stored at the Rocky Fork Plant for approximately one year after the completion of the construction at the 40th Street Plant.
7. The John Deere generator and the pump were listed for sale on e-Bay on the seller's account of PSD employee William V. Ashley.
8. Respondent allowed employees of the PSD to use materials owned by the PSD to improve or refurbish the John Deere generator in anticipation of listing the items for sale.
9. Such improvement or refurbishing was performed by PSD employees during times in which they were being paid as PSD employees.
10. The John Deere generator was sold for \$9,000.00 through the e-Bay listing.
11. The proceeds of the sale were distributed among certain employees rather than placed into the PSD's general fund.
12. Respondent Burks personally received \$900.00 from the sale of the John Deere generator.
13. The Flygt submersible pump was sold for \$5,500.00 through the e-Bay listing.
14. Respondent did not receive any money from the sale of the Flygt submersible pump.
15. Other pieces of equipment owned by the PSD were listed for sale on e-Bay in 2012 and 2013, including two 10 hp Flygt pumps, a 14.8 Flygt pump, a 250 amp circuit breaker, two 150 hp Westinghouse electric motors and other items.
16. On January 1, 2013, Respondent became the General Manager of the PSD. During 2012, and earlier, he served as the Assistant General Manager.
17. The Commissioners for the Union PSD learned of the sale of the John Deere generator and the Flygt submersible pump on March 21, 2013.
18. On or about April 1, 2013, other items which had been listed for sale, and which were the property of the PSD, were removed from e-Bay before they were sold.

19. Respondent paid \$900.00, without interest, to the PSD as repayment of the money he received from the sale of the John Deere generator on or about May 16, 2013.
20. The Complaint was referred to the Commission's Probable Cause Review Board, which ordered the issuance of a Notice of Investigation (NOI). The Executive Director issued the NOI on May 9, 2014.
21. The Respondent immediately contacted Ethics Commission staff and expressed his desire to fully cooperate with the investigation and conciliation of this complaint.
22. Respondent has fully and promptly cooperated with the Ethics Commission staff throughout the investigation and conciliation process.

RELEVANT LEGAL PROVISION

W. Va. Code § 6B-2-5(b) provides:

(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

CONCILIATION OF VIOLATION

I, Earl R. Burks, freely and voluntarily acknowledge that I violated the above provision of the West Virginia Governmental Ethics Act.

In Order to resolve this matter, I enter into this Agreement. For this Conciliation Agreement to be finalized, the 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 Commission's imposition of the following sanctions:

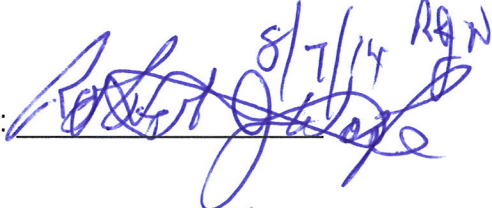
_____ (initials)

1. Fine of \$1,000.00;
2. Public Reprimand; and
3. Training regarding the West Virginia Ethics Act either in person or by viewing the training provided on the Ethics Commission's website, www.ethics.wv.gov, or otherwise provided by the Ethics Commission, within 90 days of the entry of the Order of the Ethics Commission adopting this Agreement. Respondent shall notify the Commission in writing upon his completion of this training.

I understand and agree 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.

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

Both parties understand that, pursuant to W.Va. Code § 6B-2-4(s), the Conciliation Agreement and Commission Order must be made available to the public.

Date: 8/7/14 RAN



Robert J. Wolfe, Chairperson
W.Va. Ethics Commission

Date: 9/29/14


Earl R. Burks, Respondent

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

**IN RE:
EARL BURKS**

**COMMISSION INITIATED COMPLAINT
CIC 2014-01**

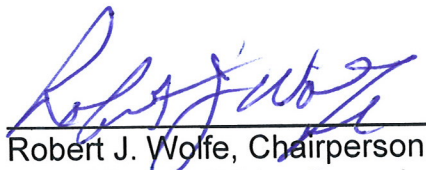
COMMISSION'S ORDER

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), the Commission imposes the following sanctions:

- (1) The West Virginia Ethics Commission hereby Orders that Respondent Earl Burks shall pay a fine of \$1,000.00 to the West Virginia Ethics Commission for violating the Ethics Act. The fine shall be paid to the West Virginia Ethics Commission within sixty (60) days of the entry of this Order;
- (2) Respondent Earl Burks shall receive a public reprimand; and
- (3) Respondent shall attend training regarding the West Virginia Ethics Act provided through the Ethics Commission's website (at www.ethics.wv.gov) or otherwise provided by the Ethics Commission within 90 days of the entry of this Order. Respondent shall notify the Commission in writing upon his completion of this training.

Date

8/7/14


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission