

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

MINDY KEARNS

COMPLAINT NO. VCRB 2011-36

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Mindy Kearns (collectively referred to herein as the "Parties") 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 Mindy Kearns, and are to be taken as true and correct:

1. Respondent Mindy Kearns ("Respondent") is the Mayor of the Town of Mason, West Virginia, and has held this elected public office at all times relevant herein.
2. The Town of Mason operates as a Mayor-Council form of government. *See* W.Va. Code § 8-3-2. As such, the five members of the Town Council and the Mayor collectively serve as the governing body and the administrative authority for the Town of Mason.
3. As the Town's elected governing body, both the Mayor and Town Council members receive a salary for attendance at monthly meetings.

4. In addition, members of the Town Council and Mayor have historically appointed themselves as the respective “head” (also known as “Commissioner”) of the various Town departments/committees.
5. Presently, there are seven primary departments/committees in the Town of Mason which the Mayor/Council members oversee:
 - i. Water Department;
 - ii. Sewer Department;
 - iii. Police;
 - iv. Trailer Permits;
 - v. Dilapidated Buildings;
 - vi. Streets; and
 - vii. Parks and Recreation.
6. While not specified in the Town’s Charter or ordinances, the Town Council members and Mayor receive extra compensation for serving as a “Commissioner” for these respective departments/committees.
7. The Commissioner for the Water Department and the Commissioner for the Sewer Department were historically each paid \$125.00 a month.
8. Upon assuming the office of Mayor on July 1, 2011, the Respondent appointed the Town Council members to the respective departments/committees in which they would serve as Commissioner.
9. Respondent additionally appointed herself as the Commissioner for both the Water Department and the Sewer Department, thereby increasing her Mayoral salary an additional \$250.00 a month.

10. During the July 7, 2011 Town Council meeting, the Mayor proposed increasing her salary as the Commissioner of both departments. A motion was made and passed to go into Executive Session by a Town Council member. The Mayor remained in the room and participated in the Executive Session discussion.
11. Upon coming out of Executive Session, a motion was made and passed to (1) increase the payment for the Commissioner of the Water Department and the Sewer Department an additional \$125.00 a month for each department; and (2) make the Commissioner of the two departments serve a minimum of 40 hours a month.
12. The Mayor admits participating in the Executive Session discussion and voting on the increase in her salary.
13. The Mayor additionally acknowledges that neither the increase in compensation nor her employment with the Town was listed on the meeting's agenda for the July 7, 2011 meeting.
14. As a result of the meeting, the Mayor's compensation was increased an additional \$250.00 a month, for a total compensation of \$500.00 a month for serving as the Commissioner of the two departments. This compensation was in addition to her Mayoral salary.
15. Following the July 7, 2011 meeting, a Town Council member who had been absent from the meeting learned what had transpired and raised the issue during the Town's next meeting on July 21, 2011.
16. During the July 21, 2011 meeting, the Town Council again went into Executive Session and discussed the increase in the Mayor's compensation as Commissioner of the Water and Sewer departments. Following the Executive Session, the Town

Council member made a motion to sever the two positions, and allow him to head one of the departments. According to the meeting minutes, the motion died for lack of a second.

17. Thereafter, the minutes of the July 21, 2011 meeting reflect that the Town Council member questioned the ability of the Mayor to “entertain a motion to give herself a raise.”
18. According to the minutes, the Mayor “stated that she could entertain a motion as a regular employee and not as an elected official.”
19. Thereafter, on September 15, 2011, the Town Council member filed a Complaint with the Ethics Commission alleging that Respondent had improperly participated in discussions and votes relating to increasing her salary, and had failed to recuse herself from the matter. The Complaint additionally alleged that by hiring herself as an employee and by accepting a raise in her current term of office, she was using her office for her own private gain.
20. Throughout the Commission’s investigation, Respondent has been cooperative and forthcoming, and has expressed a willingness to correct and avoid any appearance of impropriety which her conduct has created in the public’s eye.
21. Having been made aware of the applicable Ethics Act provisions, the Mayor now understands that she should have recused herself and should not have been hired as an employee of the Town. While it was her understanding that the 40 hour work requirement was a legitimate basis to increase the Commissioner salaries, she also now understands and acknowledges that she should not have increased her own compensation or Mayoral salary during her current term of office.

22. In addition, upon learning of the Ethics Act provisions, the Respondent ceased her increased Commissioner compensation in December 2011. Hence, Respondent only received the \$250.00 a month increase for five months (July 2011 to November 2011).
23. The Commission additionally notes that current and prior members of the Town Council also received additional compensation as "Commissioners" and that it had been a long-standing practice prior to the Mayor and/or any current council member taking office.
24. The Ethics Commission's investigation also revealed that prior Mayors of the Town of Mason had also appointed themselves as Commissioner of the Water and/or Sewer Departments, and had been paid the \$125.00 a month compensation.
25. Notwithstanding, in order to avoid any appearance of impropriety and to ensure compliance with State law, the Respondent is going to cease accepting compensation for being a Commissioner, and will consult with the Town's Attorney about current and future Commissioner payments by Town Council members.

RELEVANT LEGAL PROVISIONS

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

West Virginia Code § 6B-2-5(j)(1) provides, in relevant part, that a public official may not vote on a matter in which the official has a financial interest.

West Virginia Code § 6B-2-5(j)(3) states: “For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.”

CONCILIATION OF VIOLATION

I, **MINDY KEARNS**, Mayor of the Town of Mason, West Virginia, freely and voluntarily enter into this Conciliation Agreement. I admit and acknowledge that I violated the West Virginia Ethics Act (W.Va. Code § 6B-1-1 *et seq.*) by accepting employment with the Town and increasing my Mayoral salary and compensation during my current term of office. I further admit and acknowledge that I violated the Ethics Act by not properly recusing myself during the discussion and vote on increasing my compensation and/or in hiring myself as an employee of the Town.

In order to resolve this matter, I hereby enter this agreement. I believe it is in my best interest and the interest of the public to resolve this matter without further proceedings. By signing this agreement, I also agree to the imposition of sanctions by the West Virginia Ethics Commission.

I acknowledge and hereby agree that no promise or agreement other than that herein expressed has been made to me. I further acknowledge that in executing this Agreement, I have carefully considered the terms and sanctions; have been afforded the opportunity to consult with counsel; am entering this Agreement of my own free will and accord; and am

not suffering from any condition which prevents the exercise of my judgment with respect to the terms of the Agreement.

I additionally acknowledge that I do not have to enter into this Conciliation Agreement. I understand that in lieu of this Agreement, I may challenge, refute and provide a defense on my own behalf to the allegations raised in the Complaint. I understand that if I do not enter into this Agreement, this matter will be referred back to the Probable Cause Review Board and I will have the opportunity to respond to the Complaint in writing and/or in person. I also understand that if, after investigation, the Review Board finds probable cause to believe that I violated the Ethics Act, I will be entitled to a public hearing; and I will be permitted to call witnesses on my own behalf and to cross examine witnesses called by the Complainant and to refute evidence presented against me.


I also fully understand that if I do not enter into this Agreement, the Ethics Commission must prove beyond a reasonable doubt that I have violated the West Virginia Ethics Act before imposing any sanctions against me. Notwithstanding these foregoing rights, it is still my desire to proceed with this Agreement and resolve this matter without further adjudication of the merits of the alleged violations.

I understand that for this Conciliation Agreement to be finalized, the Ethics Commission must approve the Agreement and must further make determination concerning the sanctions to impose.

In consideration for the settlement and resolution of this matter, I agree to the imposition of the following sanctions by the Ethics Commission:

- a. Public Reprimand;

- b. Cease and Desist from accepting any payment as Commissioner of the Sewer and Water Departments; or any other form of compensation other than Mayoral salary;
- c. Pay the Town of Mason One Thousand[^] (\$1,250.00) dollars as reimbursement for the five month increase in compensation; and
- d. Pay a Fine of Five Hundred (\$500.00) dollars.

TWO HUNDRED FIFTY 

I further agree to repay the reimbursements and fine in the following structured payments, with the understanding that the reimbursements to the Town of Mason shall be completed prior to the payment of the \$500.00 fine:

- a. Pay to the Town of Mason the aggregate of One Thousand Two Hundred Fifty (\$1,250.00) dollars in five equal monthly payments of Two Hundred Fifty (\$250.00) dollars due on or before the 15th of each successive month, with the first payment owing and due on or before October 15, 2012; and
- b. Pay to the Ethics Commission for deposit into the State of West Virginia General Fund the aggregate of Five Hundred (\$500.00) dollars in two equal monthly payments of Two Hundred Fifty (\$250.00) dollars due on or before the 15th of each successive month, with the first payment owing and due on or before March 15, 2013.

I further understand that in consideration of my cooperation with the Ethics Commission, the Ethics Commission will not recommend my removal from office. I further acknowledge and agree that should I be found guilty of violating the Ethics Acts in the future, the Ethics Commission will recommend removal as one of the penalties.

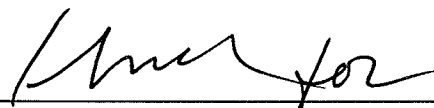
By signing this Agreement, I hereby acknowledge and agree that the Ethics Commission will impose only the sanctions listed above. In the event the Ethics Commission enters an Order imposing any sanction exceeding or in addition to those specifically set forth herein, then this Conciliation Agreement shall be null and void.

It is further hereby agreed that if the Ethics Commission fails to approve this Conciliation Agreement, this Agreement shall be null and void and this matter 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, I understand that it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above. I further understand that pursuant to W. Va. Code § 6B-2-4(s), this Conciliation Agreement and the Ethics Commission's Order must be made available to the public.

WHEREFORE, the foregoing constitutes the full and complete Agreement between the Parties, and each Party has voluntarily and freely affixed their signature below with the intent to be bound thereby.

Date: _____



R. Kemp Morton, Chairperson
WV Ethics Commission *as Acting Chairperson*

Date: 9/5/12



Mindy Kearns, Respondent

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

MINDY KEARNS

VCRB 2011-36

COMMISSION'S ORDER

After considering the 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. Respondent Mindy Kearns shall be and hereby is **Publicly Reprimanded**;
2. Respondent shall **Cease and Desist** from accepting any payment as Commissioner of the Sewer and Water Departments; or any other form of compensation other than Mayoral salary; and
3. Respondent shall pay a total of **One Thousand Seven Hundred Fifty dollars (\$1,750.00)**, as follows:
 - a. Pay the Town of Mason One Thousand Two Hundred Fifty dollars (\$1,250.00) as reimbursement for the five month increase in compensation;
 - b. Pay a Fine of Five Hundred dollars (\$500.00) to the West Virginia Ethics Commission; and

- c. Pay the reimbursement and fine in the following structured payments, with the understanding that the reimbursement to the Town of Mason shall be completed prior to the payment of the fine:
- i. Pay to the Town of Mason the aggregate of One Thousand Two Hundred Fifty dollars (\$1,250.00) in five equal monthly payments of Two Hundred Fifty dollars (\$250.00) due on or before the 15th of each successive month, with the first payment owing and due on or before October 15, 2012; and
 - ii. Pay to the Ethics Commission for deposit into the State of West Virginia General Fund the aggregate of Five Hundred dollars (\$500.00) in two equal monthly payments of Two Hundred Fifty dollars (\$250.00) due on or before the 15th of each successive month, with the first payment owing and due on or before March 15, 2013.

It is so ORDERED.

Dated: October 4, 2012



Jonathan E. Turak, Acting Chairperson
W. Va. Ethics Commission