



# The Ethics Act

## A Code of Conduct for Public Servants

*W. Va. Code § 6B-1-1, et seq.*

West Virginia Ethics Commission  
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## What is the Ethics Act?

The West Virginia Governmental Ethics Act is a code of conduct to guide public officials and public employees in avoiding conflicts between their personal interests and their public responsibilities.

## Who is covered by the Act?

The code of conduct established by the Act applies to all full-time and part-time public servants (public employees, elected and appointed public officials) who serve in the legislative, judicial and executive branches of state, county and municipal governments and their respective boards, commissions and agencies.

## What is the Ethics Commission?

The West Virginia Ethics Commission was created to administer the Ethics Act. It is comprised of nine part-time citizen members appointed by the Governor and approved by the West Virginia Senate. The Commission is supported by a full-time staff.

## What does the Commission do?

The Ethics Commission is responsible for enforcing the Ethics Act and advising public servants regarding the Act.

Many questions from the public can be addressed by staff over the phone. Please call (304)558-0664 or contact staff by email at [ethics@wv.gov](mailto:ethics@wv.gov).

Some questions require consideration by the full Commission at its regular monthly meeting through the issuance of a written Advisory Opinion.

The Commission's Committee on Open Governmental Meetings answers questions from governing bodies and their members, and provides Advisory Opinions on the meaning and application of the Open Meetings Act.

The Committee on Standards of Conduct for Administrative Law Judges answers questions from ALJs and provides Advisory Opinions to them which interpret the Code of Conduct for State Administrative Law Judges. It also rules on complaints filed against ALJs.

The Ethics Commission is also responsible for the registration and reporting of lobbyists and for the processing of Financial Disclosure Statements.

## Minimal Ethical Standards\* Established by the Act

*\*Agencies may impose stricter rules of conduct than those set forth in the Ethics Act.*

### Private Gain

The basic principle underlying the code of conduct created by the Ethics Act is that those in public service must use their positions for the benefit of the public and not for their own private gain or for the private gain of another.

For example:

- Public servants may not use their agency's supplies or equipment for personal projects or activities.
- Public employees and full-time appointed officials may not work on personal projects or activities during work hours for which they are paid by their government employer.
- Public servants may not use subordinates to work on personal projects or activities during work hours or compel them to do so on their own time.

## **Gifts**

Public servants may not solicit a gift unless it is for a charitable purpose from which he or his immediate family members derive no direct personal benefit. Public servants may solicit political contributions, but should be aware of W. Va. Code § 3-8-12(h), which provides: “No person shall solicit any political contribution from any non-elective salaried employee of the state government or any of its subdivisions.” Public servants may not solicit a subordinate for any gift even if it is for a charitable purpose.

Public servants may not accept gifts from lobbyists, or from interested persons\*, unless the gift fits into one of the following exceptions:

- meals and beverages if the person providing the meals and beverage is present;
- unsolicited gifts of a value of \$25 or less;
- ceremonial gifts or awards of trivial value;
- reasonable expenses incurred in appearing at a speaking engagement;
- reasonable honoraria;
- free tickets to political, charitable, or cultural events normally given as a courtesy to the office;
- purely private and personal gifts, and
- lawful political contributions.

*\*“Interested persons” are those who do or seek to do business with, are regulated by or are otherwise financially interested in, the activities of the public servant’s governmental agency.*

## **Selling to Subordinates**

Although they may choose to buy from a supervisor, a public servant may not personally solicit (in person, by phone or by personal letter) private business from subordinates who the public servant directs, supervises or controls. Solicitations directed to the public at large for sale of property which the public servant is not regularly engaged in selling are permitted.

## **Voting\***

A public official may not vote on a matter in which she, or an immediate family member, has a financial interest or matters involving a business with which she or an immediate family member is associated.

Legislative voting is governed by a separate provision in the Act which permits voting by Legislators after a ruling from the presiding officer in their chamber regarding a potential conflict is obtained.

*\*See **Voting** brochure for detailed information.*

## **Private Interests in Public Contracts, Purchases & Sales**

A public servant may not have a financial interest in any contract, purchase or sale over which her public position gives her control. The public servant’s spouse, dependent parents or dependent children also may not have such an interest unless the total value of the contracts, purchases or sales is less than \$1,000 in a calendar year. The Commission has authority to grant an agency a hardship exemption from this provision.

This provision applies only to:

- (1) those contracts which one’s job gives him authority to award or control, and
- (2) those purchases and sales he is authorized to make or direct others to make.

Part-time appointed officials (except those covered by W. Va. Code § 61-10-15) are not subject to this prohibition provided they recuse themselves from considering and acting on such matters consistent with the provision regarding voting.

### **Use of Name or Likeness Using Public Funds**

This section of the Act is commonly referred to as the “trinkets statute” and provides that public officials, their agents, or anyone on the public payroll may not place the official’s name or likeness on trinkets and other places paid for with public funds in violation of the section’s limitations and prohibitions. This section is set forth in W.Va. Code § 6B-2B-1 through -6.

This section of the Act provides limitations and prohibitions on the use of public officials’ names or likenesses on “trinkets,” advertising, vehicles, table skirts, banners, educational materials, websites and social media if these items are paid for with public funds.

The statute does not prohibit a public official’s name and likeness on any official record, official report, letterhead, or document, certificate or instructional material issued in the course of his/her duties as a public official. Other official documents, such as fax cover sheets, press release headers, office signs and envelopes may include the public official’s name, but not his or her likeness.

### **Licensing & Rate-Making**

A public servant may not take official action on a license or rate-making matter affecting an entity in which she, or the members of her immediate family, own or control an interest of 10% or greater. In addition, unless he files a prior written public disclosure with his agency, a public servant may not take official action on a license or rate-making matter affecting a person to whom the entity in which he has an interest has sold goods or services totaling more than \$1,000 during the preceding year.

### **Changing Jobs**

Full-time public servants may not: (1) seek employment with, (2) be employed by or (3) seek to purchase from, or sell or lease real or personal property to, any person or business:

(a) that has a matter before the agency on which they are taking, or a subordinate is known to be taking, regulatory action, or

(b) that had, within the preceding 12 months, a matter on which they took, or a subordinate is known to have taken, regulatory action.

The Ethics Commission has authority to grant an exemption from this prohibition.

### **Conflicts of Interest: Employment**

Full-time public servants may not take personal regulatory action on matters affecting a person:

(a) by whom they are secondarily employed, or

(b) with whom they are seeking employment or have an agreement concerning future employment.

### **Dual Compensation**

No public servant may receive compensation from two sources in state, county or municipal government for working the same hours except under certain limited circumstances. Persons who are allowed to make up time missed with a governmental employer to perform the duties of another governmental position are required to maintain specific time records. Their employers are required to submit these records to the Ethics Commission on a quarterly basis.

### **Private Pay Prohibited**

Full-time public servants may not accept private pay for providing information or services which are within the scope of their public duties. They cannot sell, even on their own time, services which their public position requires them to provide.

## **Limitations During and After Governmental Service**

**Confidential Information:** Public servants may not, during or after governmental service, knowingly and improperly disclose confidential information acquired through their public positions or use it to further the personal interests of themselves or of another person.

**Prohibited Representation:** The Ethics Act requires a public servant to obtain her agency's consent before she represents a client in a matter in which she is or was substantially involved on behalf of the agency. This applies both during and after the person's governmental service.

The prohibition applies only to those matters in which the public servant was personally involved in a decision-making, advisory or staff support capacity. It does not apply to legislators or legislative staff.

**Limitation on Practice:** Certain public servants are prohibited from representing persons before the agency which they serve during their employment or service and for one year after the termination of their employment or service. This is referred to as the "revolving door prohibition."

This prohibition applies only to elected and appointed public officials and full-time staff attorneys and accountants in agencies authorized to hear contested cases or make regulations.

This prohibition applies to representation in contested cases, regulation filings, license or permit applications, rate-making proceedings and in efforts to influence the expenditure of public funds. It does not apply to legislators or legislative staff.

The Ethics Commission has authority to grant an exemption from this prohibition.

**Lobbying:** The following public officers or employees may not, during or for one year after the termination of their public employment or service, be allowed to register as lobbyists:

- (1) Members of the Legislature;
- (2) Members of the Executive Department as referenced in article VII, section one of the Constitution of West Virginia (Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General);
- (3) Will and pleasure professional employees of the Legislature under the direct supervision of a member of the Legislature;
- (4) Will and pleasure professional employees of members of the Executive Department under the direct supervision of the Executive Department officer and who regularly, personally and substantially participates in a decision-making or advisory capacity regarding agency or department policy;
- (5) Members of the Supreme Court of Appeals;
- (6) Secretaries of the Departments of Administration, Education and the Arts, Environmental Protection, Health and Human Resources, Military Affairs and Public Safety, Revenue, Transportation, Commerce and Veterans' Assistance; and
- (7) Heads of any state departments or agencies.

## **For County Public Servants Only**

Certain county personnel are also subject to W. Va. Code § 61-10-15, which is a criminal statute containing a similar, but more comprehensive, prohibition regarding contracts. The Ethics

Commission is responsible for advising public servants about this statute but has no role in its enforcement.

W. Va. Code § 61-10-15 applies to:

- (1) elected county officials (including sheriffs, county commissioners and school board members),
- (2) appointed county officials (those who serve on county boards, commissions, authorities and agencies), and
- (3) public school superintendents, principals and teachers.

It does not apply to other county workers.

W.Va. Code §61-10-15 prohibits these county employees and officials from having personal financial interests, directly or indirectly, in a contract, purchase or sale over which their public position gives them "voice, influence or control." The prohibition extends to their spouses, those whom they support, and businesses in which they have an ownership interest or by which they are employed.

The Ethics Commission has authority to grant exemptions to a county agency based upon documented hardship.

W.Va. Code §61-10-15 imposes strict limitations on nepotism in employment. County officials may not hire their spouses or dependent family members.

There are certain very specific exceptions to this statute. Contact the Ethics Commission with questions.

## Complaints

The Ethics Commission and its Probable Cause Review Board investigate and resolve violations of the Ethics Act. Any citizen who is aware of a violation of the Act may file a written complaint with the Commission. In addition, the Commission itself may initiate a complaint if it receives credible evidence of a material violation of the Act.

Complaints are first reviewed by the three-member Probable Cause Review Board to determine whether the allegations in the complaint would constitute a violation of the Ethics Act. The Review Board dismisses complaints which allege trivial or inconsequential violations without an investigation.

If a complaint is investigated, at the conclusion of the investigation the Review Board may either dismiss the complaint or issue an order finding that there is probable cause to believe that the person against whom the complaint was filed violated the Ethics Act. The matter will then proceed to a public hearing or be resolved through a settlement, or "conciliation," agreement.

Persons found guilty of a material violation of the Act may be publicly reprimanded and fined up to \$5,000 per violation. The Commission also may order restitution, reimbursement to the Ethics Commission for its costs, or recommend that the person be terminated from employment or removed from office.

It is a violation of the Act to give false and misleading information to the Commission or to procure or induce another to provide false information to the Commission. If the Commission finds by clear and convincing evidence that a complaint was made in bad faith it may issue sanctions against the person who filed the complaint.

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