

WEST VIRGINIA ETHICS COMMISSION

In the matter of:

Verified Complaint No. 2005-10

Filed 09-13-05

Verified Complaint No. 2005-10a

Filed 12-10-05

ORDER

On Thursday, February 1, 2007, the Ethics Commission, in accordance with West Virginia Code § 6B-2-4, heard arguments by counsel for the Complainant and Respondent. The Commission denies the Respondent's Motion to Strike the Reply Brief of the Commission's Legal Counsel as non-prejudicial error. After hearing the arguments of counsel, reviewing the evidence of record *de novo*, and considering the Recommended Decision of the Hearing Examiner, the Commission finds beyond a reasonable doubt that Respondent Ramey violated two provisions of the Ethics Act: (1) W.Va. Code § 6B-2-5(d) (prohibited interest in a public contract); and, (2) W.Va. Code § 6B-2-5(b) (use of office for private gain).

The Ethics Commission hereby accepts in part, and rejects in part, the Recommended Decision of the Hearing Examiner. The Ethics Commission, makes the following finds of fact and conclusions of law.

FINDINGS OF FACT

1. The Respondent James Ramey III, is the elected Mayor of the Town of Wayne during all times pertinent to this matter.
2. The Respondent owns a building which he leases to the Town. Hearing Transcript ("Tr.") at 129-130; see Joint Exhibit ("JE") 8.
3. The lease between the Respondent and the Town of Wayne provided, in pertinent

part, that the lease was renewable by the Town under terms and conditions stated therein, that the Town 'shall not assign, transfer or sublet" the lease without consent of the Respondent Lessor, and that any improvements or alterations made to the subject building "shall become a part of the fee and shall belong to the party of the first part [the Respondent], his heirs or assigns."

4. Prior to leasing the building, the Town of Wayne obtained an exemption from the Ethics Commission. (Tr. at 131 and JE 2). The exemption was granted in Advisory Opinion No. 2003-01 which was issued on February 6, 2003. (JE 2). The Advisory Opinion reads in pertinent part as follows:

The Commission finds that prohibiting the Town Council from relocating its Town Hall and other municipal activities to a central location leased from the City's Mayor at a reasonable rate would result in an undue hardship to the Town.

5. The Opinion granted the Town an exemption to lease the building for seven years. When the Town originally requested the exemption, it did not ask the Ethics Commission if it could seek to renovate the building for a tenant. (Tr. at 132, testimony of Mayor Ramey). Recorder Scott testified that he initially wrote a letter to the Ethics Commission in 2003 for an exemption for the initial lease. (Tr. at 100). He stated that when the Town initially sought the opinion of the Ethics Commission that the Town never asked whether it could renovate a portion of the building for the State Police. (Tr. at 100). When the Town initially moved into the building in 2003, it had a Committee of council members who recommended improvements (Tr. at 96). The exemption granted by the Ethics Commission did not include authority to improve the real estate for a party other than the Town of Wayne.

6. The Town of Wayne has never occupied the entire building. At one point a

portion of the building was leased to Stat Ambulance Service. This tenant then left.

7. In June of 2005, Mayor Ramey brought to the Town Council a proposal to lease a portion of the Town Hall to the West Virginia State Police. (Tr. at 134). The minutes from the meeting read:

Mayor Ramey reports that the West Virginia State Police are interested in leasing the area that was formerly leased by Stat Ambulance Service. The area will require some minor renovations prior to the start of the lease. Mr. Reed moved to offer a year lease to the WV State Police at a rate of \$ 500.00 per month and to perform required alterations that are required, seconded by Mr. Ramey, and the same passed unanimously. (Town Minutes, Ex. 3).

8. As the minutes reflect, the motion passed unanimously. Mayor Ramey did not vote. Council Member Roy Ramey made the motion. Roy Ramey is not related to the Mayor.

9. The Respondent Mayor Ramey did not call the Ethics Commission in 2005 to seek advice regarding whether the proposed course of action was permissible. (Tr. at 134).

10. Sgt. R. Perry is the highest ranking officer in the Wayne Detachment of the West Virginia State Police. For many years the detachment was based in a building owned by Arthur Browning. At some point Sgt. Perry began to look for new space for the detachment after it was brought to his attention that there was going to be a rent increase. He had discussions with Mayor Ramey about leasing space at the Town Hall. He further discussed with Mayor Ramey how the price of the lease may vary depending on who undertook the renovations, either the Town itself or the State Police. Sgt. Perry stated that Mayor Ramey was his main point of contact with the Town. Sgt. Perry discussed with him what renovations would be necessary and also gave Mayor Ramey a diagram of the proposed renovations (See Tr. at 100-111).

11. Several former Council Members testified at the Public Hearing. Former Council Member Roy Ramey testified that at the June 20, 2005 meeting, he recalled Mayor Ramey stating that they “[N]eeded to build a vault and move a partition.” (Tr. at 23). Jacquelyn Ramey was also present at the June 20th meeting. Ms. Ramey recalls Mayor Ramey representing at the meeting that there would be minor renovations. The only specific renovations she recalls Mayor Ramey mentioning was a room for the State Police to keep their evidence and that a partition needed moved. (Tr. at 62-63).

12. The Town of Wayne had during periods pertinent to this case a general procedure in place for authorizing purchases and approving payments. In regards to authorizing purchases, generally the Mayor has authority to make a purchase without formal Council approval when the amount of the purchase is \$500.00 or less. (Testimony of Recorder Robert Scott, Tr. at 84). There appears to be no formal written policy. The council minutes reflect that in 1993 the Town Council voted that purchases over \$50.00 would require a purchase order. (JE. 7). Since that meeting it appears that the Town has either formally or informally increased the Mayor’s spending authority. While the Council Members sign a purchase order, the purchase orders are not signed prior to the Mayor ordering supplies or contracting with vendors.

13. The pertinent practice in regards to payment of bills is as follows. The Mayor or other authorized individuals will make a purchase. The expense vouchers/purchase orders are then placed in a room where Council Members may review the vouchers/purchase orders and related bills when they have time. The signatures of three council members are required prior to a bill being paid. If the Council Members agree with the purchases, they indicate their approval by

signing the purchase order. Once there are three signatures, the Town's clerk generates a check which is then signed by the Recorder and Mayor.

14. The Town Recorder, Robert Scott, testified during the public hearing. In regards to the Town and the powers of the Mayor he stated that:

- The form of government is Mayor and Council
- The Town does not have a charter
- The Mayor has the power to vote and may exercise it at anytime, not just to break a tie
- The Mayor has authority to negotiate contracts on behalf of the Town, including authority to control improvements to the leased property and performance of the work
- The Mayor has signatory authority on checks

15. At a time after the June 20th meeting, Mayor Ramey called Councilman Roy Ramey and asked if he was okay with putting on a new roof Councilman Ramey agreed with the proposal as the Town had already committed to the lease with the State Police. Mr. Ramey expressed doubt when the Mayor contacted him and asked his thoughts on purchasing new office furniture and new flooring. (Tr. at 25-26).

16. At some point during the renovation process, Council Member Roy Ramey elected not to sign-off on the payment of certain bills arising from the renovation project due to questions he had about "volume of the purchases coming in and the amount of them." Mr. Ramey generally testified that he felt that things had gone beyond what he originally agreed to. (Tr. at 31).

17. Jacqueline Ramey also testified at the hearing. She testified that the only purchase order she ever signed was for renovations to the roof (Tr. at 66). When asked if she agreed or disagreed with other purchases she testified:

I was never asked. I mean, it was never brought to my attention at a meeting that this needs to be done or that needs to be done, that it's going to cost X-amount of dollars. These — these vouchers were appearing on the table in the room and no one was — I was never asked. (Tr. at 66).

18. At some point, invoices for the renovations were not being paid as various council members had not signed off. The issue of paying the bills was placed on the agenda for the November 14, 2005 meeting. The supplies had already been delivered and the work performed. The bills to be discussed are listed in the minutes from that meeting and included:

Stationer's Inc.	\$2,753.42
Builders Supply	\$8,332.78
Justice Supply	\$127.84
Kenny Queen Hardware	\$1,233.78
Ross & Williamson Heating	\$6,925.00
Cash & Carry Carpets	\$3,309.49

19. During the meeting, Ms. Ramey testified that Mayor Ramey yelled at her and said something to the effect of "She was the dumbest woman he had ever dealt with in any type of public meeting and sitting on Council, and that he would pay to move her out of town personally

and that he could call her a bitch.” (Tr. at 69). The minutes from the meeting reflect that both Mr. and Mrs. Ramey abstained from voting to approve the bills. Mr. Ramey in part testified that he abstained from voting because he “just wanted to discuss it more.” (Tr. at 36). The minutes from the meeting and testimony reflect that Mayor Ramey called for a voice vote at the meeting.

20. It was stipulated by the parties that various costs were incurred by the Town for the renovations. (JE 11 and 12). The invoices have also been made a part of the record (JE 1).

21. The total cost of renovations was \$43,931.58. A break down of the said expenditures is as follows:

\$35,282.33 — money paid to third party vendors for labor and supplies

\$ 7,793.75 — money paid to contract employees hired by the Town to work on the renovations.

\$ 855.50 — represents amount of Town money attributable to labor performed by Town employees.

22. Some of the renovations include: new roof, new wood flooring, partitions/walls for offices and a waiting room were built, new heating and cooling unit. (See photographs of record as JE 10). The Town also bought new office furniture for use by the State Police. In exchange for the furniture, the State Police Officers at the detachment installed some of the wood flooring. (See testimony of Sgt. Perry, Tr. at 115). It is undisputed that the State Police recognize that the furniture belongs to the Town. It further appears that in the absence of the renovations, the State Police would not have rented the space because of condition of that portion of the

building. (Tr. at 140).

23. There was also before the Hearing Examiner a Statement of Charges in VCRB 10a alleging forgery of signatures on purchase orders and certain unlawful contracts. The Complainant did not present any factual basis for that said charge, and did not pursue the same.

CONCLUSIONS OF LAW

1. This matter is properly before the Ethics Commission for a Final Decision.
2. The West Virginia Ethics Commission is the state agency charged with investigations and filing complaints alleging violations of the West Virginia Governmental Ethics Act, W.Va. Code § 6B-1-1, et seq. See also, 158 CSR 3-1 et seq.
3. Respondent James Ramey was the elected Mayor of the Town of Wayne during periods pertinent to this matter and as such was a public official subject to the provisions of the said statute and the authority of the Commission as to the said statute. W.Va. Code § 6B-2-5(a)
4. The West Virginia Ethics Act strictly prohibits elected officials from having an interest in a public contract over which they exercise control. The relevant portion of the Act reads:

[N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a public contract which the official or employee may have direct authority to enter into, or over which he or she may have control.

W.Va. Code § 6B-2-5(d)
5. The Commission's Legislative Rule entitled "Interest in Public Contracts" states

that:

Examples of individuals with direct authority and control over the awarding of public contracts include all elected and appointed public officials in the executive branch of City, County and State government, superintendents, assistant superintendents, purchasing directors, County Commissioners, County Board members and City managers.

W.Va.C.S.R § 158-8-2

6. The Respondent is an elected official. The pertinent code section prohibits an elected official from having an interest in a public contract which they have “direct authority to enter into, or over which he or she may have control”.

7. The following conclusions of law are made as to Count II of the Statement of Charges.

8. As to the issue of the interest of the Respondent in the said contract, the record reflects that the interest held by Mayor Ramey is that public monies were spent to make improvements on his personal real estate. The Town expended \$43,076.08 for that purpose. Such improvements are, under the terms of the lease between the Respondent and the Town, the property of the Respondent. JE 8.

9. W.Va. Code § 6B-2-5(d) makes public officials who have an interest in a public contract strictly liable for their actions. There is no requirement imposed that the public official must intend to benefit or that there is an actual financial benefit. The statute uses the terminology “interest in a public contract.” There is no language which states that a violation only occurs if a profit is realized.

10. This conclusion is consistent with the West Virginia Supreme Court’s

interpretation of W.Va. Code § 61-10-15. This code provision prohibits county officials from having a pecuniary interest in the proceeds of a contract or service over which they have voice, influence or control. In interpreting the provisions of W.Va. Code § 61-10-15 the Supreme Court has previously held that public officials are strictly prohibited from having an interest in a public contract. The test is not whether there was actual gain, but has been held instead to be an absolute standard of conduct established to eliminate the potential for corruption.

11. The West Virginia Supreme Court discussed the underlying rationale for prohibiting public officials from having an interest in a public contract in the case of Summers County Citizens League v. Tassos, 367 S.E.2d 209 (W.Va. 1988) (hereinafter “Summers”). In Summers, county voters sought the removal of county board of education members who had a pecuniary interest in contracts over which they exercised control. According to the opinion in Summers there was “no evidence of fraud, bad faith, corruption or evil intent” on the part of any of the board members. Summers 367 S.E.2d at 213. Nonetheless, the Court found that the Board Members had violated the code provision in question. In its holding, it stated:

W. Va. Code § 61-10-15 is preventive in nature; it provides an absolute standard of conduct which is violated by entering into or continuing a relationship with a private entity where that relationship may make it difficult for the county officer to represent the public with the singleness of purpose required by the statute. The statute forbids a county officer from engaging in business transactions on behalf of the public if by virtue of his or her private interests, he or she may benefit financially, directly or indirectly, from the outcome of those transactions. The question is not whether the county officer was certain to benefit from the contract, but whether the likelihood that the county officer might benefit was so great that he or she would be subject to those temptations which the statute seeks to avoid.

12. The Court also pointed out that “Significantly, the statute does not require that there be actual corruption on the part of the government agent or that there be any actual financial

loss sustained by the government.” Id. (citing the holding of the United States Supreme Court in United States v. Mississippi Valley Generating Co. 364 U.S. 520 (1961)). The Court further stated that “The statute consequently establishes an objective standard of conduct. It is directed not only at dishonor, but also conduct that tempts dishonor.” Id. at 215.

13. In the present case, Mayor Ramey had an inescapable conflict of interest relating to the expenditure of public funds for the renovation of his privately owned commercial real estate. As noted, such improvements are, under the terms of the lease between the Respondent and the Town, the property of the Respondent. JE 8. Such conflict of interest is strictly prohibited by the provisions of W.Va. Code § 6B-2-5(d).

14. The only permissible means of the Respondent legally obtaining an interest in a public contract is to seek an exemption from the Ethics Commission. Mayor Ramey was aware of the limitations imposed by the Ethics Act as the Town of Wayne previously sought formal permission from the Ethics Commission to initially lease the building from him. Despite his knowledge that the Ethics Act imposes specific limitations on holding an interest in a public contract, Mayor Ramey did not seek an exemption for the subject contract. The Mayor had a prohibited interest in the subject public contract.

15. Such an interest by a public official such as the Respondent is permissible only if the Ethics Commission grants an exemption. The initial exemption granted to the Town to lease the building did not address further leases or sub-leases. When the exemption was requested and subsequently granted, neither the Town nor the Mayor asked whether the Town could use public monies to renovate the building for a tenant. The Ethics Commission was never asked to consider

whether an exemption would be appropriate. While an exemption was granted for the initial lease contract, the renovations and expenditure of \$43,931.58 in public funds exceeds the scope of the terms approved by the Commission.

16. It is therefore found, based upon the facts and applicable law, that the Respondent Mayor Ramey had an interest in the subject lease within the meaning of the provisions of W.Va. Code § 6B-2-5(d).

17. As to the issue of the control of the Respondent in the said contract, it is undisputed that James Ramey, as the elected Mayor of the Town of Wayne, exercises control over the Town's contracts. Pursuant to the plain language of this Legislative Rule and the policies and procedures of the Town, Mayor Ramey, as an elected Mayor, is an individual who exercises control over the Town of Wayne contracts.

18. The record reflects that while Mayor Ramey did not vote on the lease, he actively participated in discussions of the lease and the renovations. The public contract in question is actually a series of contracts with various vendors and independent contractors to perform extensive work to the Town Hall.

19. A summary of the control exercised or held by the Mayor is as follows:

A. In the form of government adopted by the Town of Wayne, the Mayor has the power to vote. While Mayor Ramey did not vote at the June 20, 2005 meeting wherein Council authorized the lease and the "minor renovations," Mayor Ramey's abstention from voting does not provide a defense to a violation of W.Va. Code § 6B-2-5(d). In the absence of obtaining an exemption from the Ethics Commission, a public official may only obtain an interest in a public

contract under the following limited circumstances: (1) The public official is a part-time office holder in an appointed, not elected, position; and, (2) The public official abstains from voting. All other public officials who exercise control over a contract can only have an interest in the contract if they obtain an exemption from the Ethics Commission. The fact that the public official did or did not vote on a certain matter does not constitute a defense to a violation of this subsection.

B. It is undisputed that Mayor Ramey exercised authority when he entered into the contracts with the various vendors. Regardless if there is a dispute of fact concerning the extent of Mayor Ramey's spending power, he authorized numerous purchases for the renovations. By the time Council Members reviewed the invoices, in most instances the work had already been performed.

C. Mayor Ramey was the main point of contact with the State Police for purposes of lease negotiations and determining which renovations would be undertaken.

D. Mayor Ramey signed the actual lease agreement between the Town of Wayne and the WV State Police. (JE 73).

E. Mayor Ramey had, under the terms of his lease with the Town, the right to consent to any sub-lease such as the lease in question. (JE 8).

20. The evidence of record therefore clearly shows beyond a reasonable doubt that Mayor Ramey exercised actual or apparent control over the contracts in question.

21. The Ethics Act prohibits an elected official from having an interest in public

contracts over which he or she may exercise control. W.Va. Code § 6B-2-5(d)

22. It is therefore found that the subject public contract was one the Respondent did have direct authority to enter into, or over which he or she may have control, within the meaning of the provisions of W.Va. Code § 6B-2-5(d).

23. Based upon the facts and applicable law, it is found beyond a reasonable doubt, as to Count II of the Statement of Charges in VCRB 2005-10 that the Respondent James Ramey III, had a prohibited interest in a public contract in violation of the provisions of W.Va. Code § 6B-2-5(d).

24. As to Count I of the Statement of Charges, the Ethics Act also prohibits a public official from knowingly and intentionally using his office for his own private gain. W.Va. Code § 6B-2-5(b).

25. Based on the record of this matter, Respondent Ramey violated this provision by actively promoting the expenditure of public funds for the renovations to his building, which renovations became the property of the Respondent under the terms of the lease between the Town and the Respondent. JE 8. The actual value of the contribution is the value of the work provided by the Town's employees and the amount of money paid to third party contract employees and vendors, which totaled the sum of \$43,931.58.

26. The record does not reflect the effect on the value of the real estate of the said renovations. However, it is of record that the sum of \$43,931.58 was used for the purpose of improving the building. Such renovations and improvements were not logically expended to diminish its value. Such public expenditures relieved the Respondent of the financial burden of

making such improvements.

27. Based upon the facts and applicable law, it is found beyond a reasonable doubt, as to Count I of the Statement of Charges in VCRB 2005-10, that he Respondent Mayor Ramey violated W.Va. Code § 6B-2-5(b) by knowingly and intentionally using his office for his own private gain.

28. There was also before the Hearing Examiner a Statement of Charges in VCRB-10a alleging forgery of signatures on purchase orders and certain unlawful contracts. The Complainant, having not pursued the said Statement of Charges, it is found that the said Statement of Charges in VCRB-10a should be dismissed.

Having found beyond a reasonable doubt that the Respondent did violate W.Va. Code § 6B-2-5(d) and W.Va. Code § 6B-2-5(b), and that the violations were material, in accordance with W.Va. Code § 6B-2-4(r), the Commission hereby imposes the following sanctions:

- (1) It is hereby **Ordered** that Respondent Ramey is **publicly reprimanded**;
- (2) It is hereby **Ordered** that Respondent Ramey make restitution to the Town of Wayne in the amount of \$43,931.58 for the renovations to his building which were made in violation of the Ethics Act. This restitution shall be made within 90 days of the date of this Order;
- (3) It is hereby **Ordered** that Respondent Ramey pay a fine of \$5,000 within 90 days of the date of this Order. The check or money order is to be made payable to the State of West Virginia;

- (4) It is hereby **Ordered** that Respondent Ramey reimburse the West Virginia Ethics Commission for the actual costs of investigating and prosecuting this complaint. The Executive Director will prepare a statement of the Commission's costs and submit same to the Respondent within 30 days. Payment is due to the Commission within 90 days of the date of such statement.
- (5) Further, the West Virginia Ethics Commission recommends that Respondent Ramey be removed from public office as Mayor of the Town of Wayne.

The Respondent has the right to appeal this decision in accordance with W.Va. Code § 6B-2-5(t) and W.Va. Code § 29A-5-4 by filing a Petition for Appeal within 30 days of the date on which the Respondent receives this Order.

Date

02/01/07


Kemp Morton, Chairman
W. Va. Ethics Commission