



OVERVIEW OF THE ETHICS ACT

April 9, 2018



THE ETHICS ACT

- ◉ Applies to public servants in state, county & municipal government
- ◉ Applies to executive, legislative & judicial branches
- ◉ Applies to elected and appointed officials, full & part-time employees, AND citizen volunteers
- ◉ Does not apply to contractors or private organizations receiving government funds



Investigations and Prosecution

- HB 4604
 - 1 year cap on investigations
 - Increased statute of limitations to 5 years from 2
 - Clear and convincing evidence standard of proof

Key Provisions of The Ethics Act (W.Va. Code § 6B-2-5)

- **USE OF PUBLIC OFFICE FOR PRIVATE GAIN**
- **GIFTS**
- **INTERESTS IN PUBLIC CONTRACTS**
- **CONFIDENTIAL INFORMATION**
- **PROHIBITED REPRESENTATION**
- **LIMITATION ON PRACTICE BEFORE BOARD/AGENCY/DEP'T**
- **EMPLOYMENT BY REGULATED PERSONS/VENDORS**
- **VOTING**
- **LIMITATIONS ON COMPENSATION/ EXPENSES**

USE OF PUBLIC OFFICE FOR PRIVATE GAIN

W.Va. Code § 6B-2-5(b)

“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.”

USE OF PUBLIC OFFICE FOR PRIVATE GAIN

Key Statutory Exceptions

“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.”

USE OF PUBLIC OFFICE FOR PRIVATE GAIN

Key Statutory Exceptions

- Bonus Points through travel okay. So long as it does not result in additional costs to government
 - W.Va. Code 6B-2-5(b)(2)
- Prestige Exception: “Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.”
 - W.Va. Code 6B-2-5(b)(3)

USE OF OFFICE FOR PRIVATE GAIN



- ⦿ May not use public resources to conduct private business
- ⦿ More than a *de minimis* use of public resources violates the Act

USE OF OFFICE FOR PRIVATE GAIN



- Do not use public resources or subordinate staff for your own private use



- Do not use your public position for your or a family member's private benefit

ENDORSEMENT

Considered to be Use of Public Office for Private Gain of Another

- Not in statute. Is a product of Advisory Opinions
- “A public official may not endorse a particular product or business. A commercial endorsement of a product or business is only permissible when it results in an overriding public benefit.”

ENDORSEMENT

Considered to be Use of Public Office for Private Gain of Another

- **A.O. 2013-12-** May not endorse private company that contracted with state Agency on company's website, even when promoted office's program.
- **A.O. 2013-20-** May appear in television program for non-profit foundation that is seeking underwriting****
- **A.O. 2015-04-** Legislator/part-time public officials may appear in print, radio and television for own personal business. However, **may not** use title or any public resources to promote business.
- **A.O. 2015-17-** public educators may not appear in software vendor's promotional video demonstrating how to use the vendor's products.



SELLING TO SUBORDINATES

- ⦿ The Act prohibits supervisors from directly soliciting subordinates to buy from them
- ⦿ Employees may purchase in response to a public advertisement



OUTSIDE EMPLOYMENT

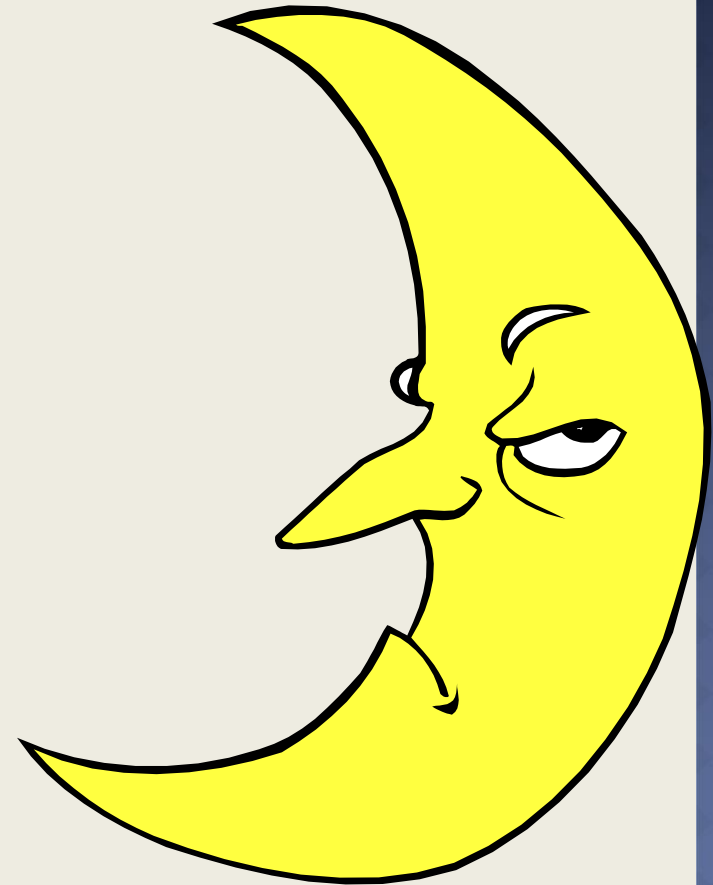


- ⦿ May not conflict with current employment.
- ⦿ Must work on own time.
- ⦿ May not be paid for something that is part of your public job duties.
- ⦿ May not work for someone you regulate.
- ⦿ May not use public resources (staff or equipment) in your private job

MOONLIGHTING



- Public agencies may adopt stricter limitations governing off-duty or secondary employment



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- **USE OF PUBLIC OFFICE FOR PRIVATE GAIN**
- **GIFTS**

GIFT LIMITATIONS



- ◉ The Ethics Act prohibits public servants from accepting gifts from interested persons, under certain circumstances.



WHO IS AN INTERESTED PERSON?

One who:

- ◉ Seeks or does business with the public servant's agency;
- ◉ Is engaged in activities regulated or controlled by the agency; or,
- ◉ Has financial interests which may be substantially & materially affected, in a manner distinguishable from the public generally, by the performance or non performance of official duties.

GIFT LIMITATIONS



- ◉ **General rule - may not accept gift from an interested party in excess of \$25**
- ◉ **2008 Legislative Rule clarifies that this means \$25 from one source in a calendar year**



GIFTS- TICKETS TO EVENTS



- May accept tickets above \$25 to a **CHARITABLE, CULTURAL, or POLITICAL** event if:
 - *the purpose of the gift is a courtesy or ceremony customarily extended to the office*



GIFTS-SPORTING EVENTS



- ⦿ May only accept ticket to sporting event over \$25 if **performing an official or ceremonial duty.**
- ⦿ May accept tickets to sporting events if ticket value is \$25 or less



GIFT LIMITATIONS



- ⦿ No \$ limit on food and beverages so long as host is present
- ⦿ Public agencies may adopt stricter limits



PUBLIC EMPLOYEE
RECOGNITION
EVENTS

PUBLIC EMPLOYEE RECOGNITION GUIDELINE



- Permissible to use public funds to recognize public employees if it serves a public purpose of promoting employee morale through recognition of achievement
- Responsibility for deciding whether it is an appropriate use of public funds lies with the head of the State Agency or the appointed board to whom the head of Agency reports.

PUBLIC EMPLOYEE RECOGNITION GUIDELINE



- May be used to purchase:
 - Light refreshments
 - Meals
 - Mementos of appreciation

- May spend up to \$25 per employee per fiscal year
 - Example:** If have 10 employees, then can expend \$250 of public funds
(\$25 x 10 employees)

- May be allocated between one or more events which are held to recognize employees



Trinkets Law

- HB 4618 (W.Va. Code 6B-2B-1)
- Lots of limitations
- Too many to mention here...

PANEL OR SPEAKING ENGAGEMENT

- If you are invited to speak at an event or as a member of a panel, you may accept the following REASONABLE expenses:

- Food
- Travel
- Lodging



- You **may not** accept expenses for amenities (e.g. golf or spa treatments)
- Depending on situation, you may accept reasonable expenses for your spouse or significant other to attend

EDUCATIONAL SEMINAR

- W.Va. C.S.R. 158-7-3
- A public official may accept from an interested third-party:
 - Reduced Rate or Free Admission
 - Reimbursement for meals, travel and lodging
- **IF**, his or her attendance will result in benefit to the government agency he/she serves by enhancing his or her job related skills and the performance of his or her job responsibilities.
- Have to meet a 5-part test

EDUCATIONAL SEMINAR

FIVE PART TEST:

- (1) Attendance by the public official or employee must fulfill an existing agency need by significantly enhancing the attendee's occupational skill or knowledge to provide important information needed by the agency to meet its official mandate;**
- (2) The seminar or conference must be appropriate for the proposed attendee.** A trip is appropriate for the attendee if he or she will use the information or job skill enhancement and is the person most suitable to acquire and transfer the skills or information to other appropriate agency personnel;
- (3) The site of the proposed trip must be appropriate.** A public employee or official may not accept payment for attendance at the seminar or conference and related costs if the same information is readily available locally;

EDUCATIONAL SEMINAR

FIVE PART TEST (Cont'd):

(4) The seminar or conference must offer a reasonable return on the time spent. Attendance at the seminar or conference should represent a reasonable investment of the public official or employee's time when weighed against the information acquired or the degree of improvement in job skills or knowledge; and

(5) The benefit to the agency must be significantly greater than the incidental benefit to the traveler.



CHARITABLE SOLICITATION

- ◉ Gifts may only be solicited for a charitable purpose, such as
United Way
- ◉ May not solicit a contribution from a subordinate
- ◉ Be aware of amount of time selling or distributing items sold for charity on “company time.”



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PROHIBITED INTERESTS IN PUBLIC CONTRACTS



W.Va. Code § 6B-2-5(d)

- ⦿ **Elected public officials and full-time employees may not have a financial interest in a public contract under their authority or control (\$1000 threshold)**
- ⦿ **Ethics Commission has discretion to grant an exemption to the public entity based upon undue hardship**

PROHIBITED INTERESTS IN PUBLIC CONTRACTS



W.Va. Code § 6B-2-5(d)(1)

- ⦿ **“Provided, however,** That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body”
- ⦿ **Legislative Exemption**

OUTSIDE EMPLOYMENT

- Full-time public servants may not work for vendors if they exercise authority or control over a contract with that vendor

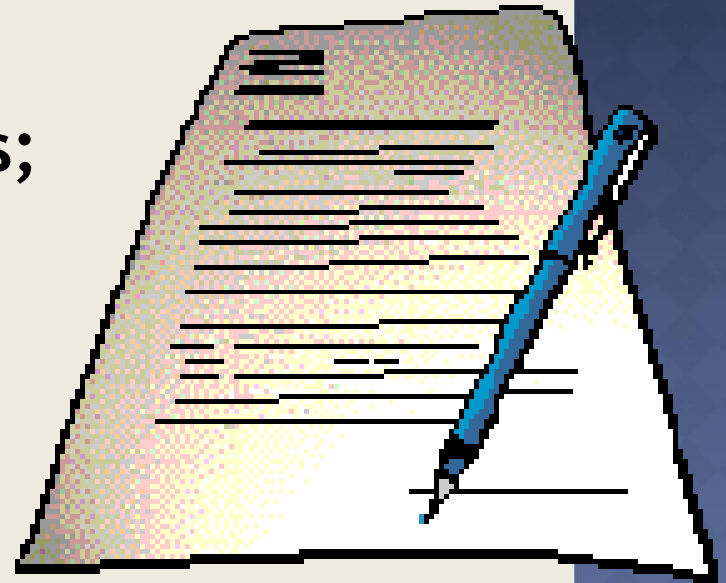


OUTSIDE EMPLOYMENT



⦿ “Exercising authority or control” includes:

- (1) drafting bid specifications;
- (2) selecting vendor;
- (3) conducting inspections;
- (4) approving payment.



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CONFIDENTIAL INFORMATION

W.Va. Code § 6B-2-5(e)

“No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.”

CONFIDENTIAL INFORMATION



- ◉ Aside from administrative penalty, improper disclosure is a criminal misdemeanor



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REVOLVING DOOR- PROHIBITED REPRESENTATION



- ⦿ A public servant may not appear in a representative capacity before their current or former agency on a matter in which they were personally and substantially involved



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SELLING AND BUYING FROM PERSONS YOU REGULATE

W.Va. Code § 6B-2-5(h)

- May not seek employment with or seek to purchase or sell or lease real or personal property from any person who:
 - (1) Had a matter on which you or a subordinate took regulatory action within the last 12 months;
 - (2) Currently has a matter before your agency on which you or a subordinate is working.
- May apply for an exemption.

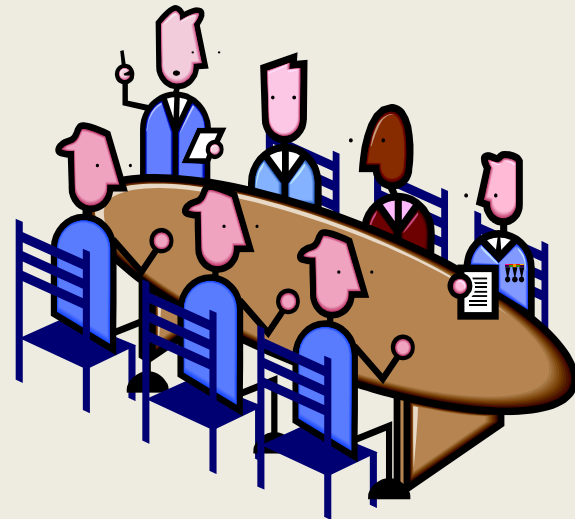
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VOTING



- ◉ The voting rules apply to anyone who serves on a governing body of a public agency
- ◉ Includes elected, appointed, full-time and part-time officials
- ◉ Specifically excludes members of the Legislature, who are subject to differing voting rule



LEGISLATIVE VOTING

W.Va. Code 6B-2-5(i)

- ⦿ “Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.”

RECUSAL

W.Va. Code § 6B-2-5(j)(3)

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.

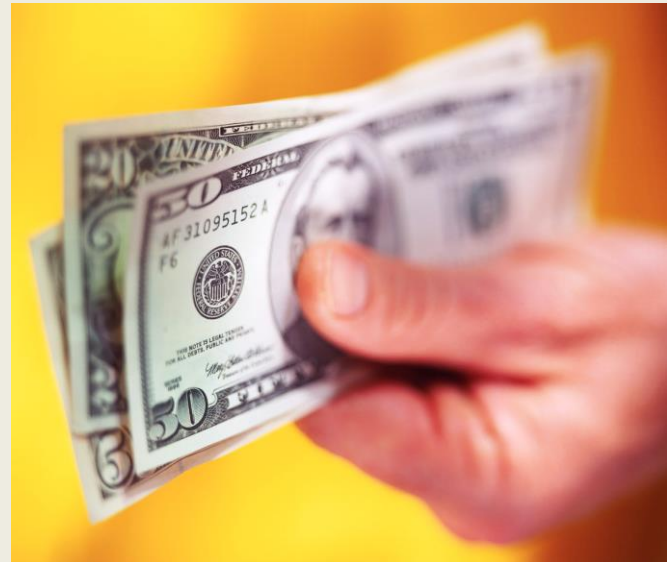
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LIMITATIONS ON COMPENSATION

W.Va. Code § 6B-2-5(l)

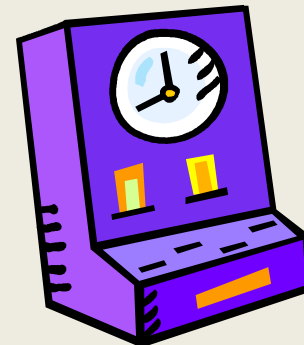
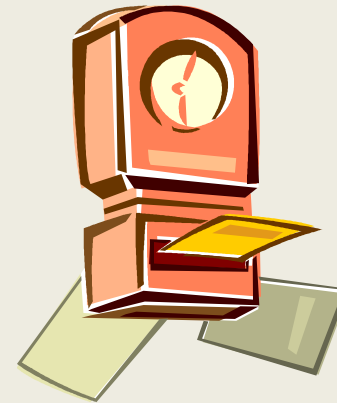
As a general rule, a public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours.



DOUBLE DIPPING



- May not receive compensation from two public sources for working the same hours - can't be on two time clocks at the same time



ANY QUESTIONS???

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