



The Ethics Act

A Code of Conduct for Public Servants

W. Va. Code § 6B-1-1 et seq

WV Ethics Commission
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What is the Ethics Act?

The **West Virginia Governmental Ethics Act** established a code of conduct to guide public officials and public employees and help them avoid conflicts between their personal interests and their public responsibilities.

The Ethics Act tells public servants what is expected of them and gives official approval to their conduct if it complies with the standards of the Act.

Who is covered by the Act?

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

What is the Ethics Commission?

The West Virginia Ethics Commission was created to administer the Ethics Act. It is comprised of twelve part-time citizen members appointed by the Governor to serve five year terms. No more than seven of the Commission's members may be of the same political party. Their appointments must be approved by the WV Senate. The Commission is supported by a small full-time staff.

What does the Commission do?

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

The primary responsibility of the Commission is to handle, in a **confidential** manner, questions from those covered by the Act. **Most questions can be handled by the staff over the phone. 304-558-0664**

Some questions require consideration by the Commission at its regular monthly meeting. The Commission answers these questions through written "Advisory Opinions."

The WV Ethics 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 or "Sunshine Law".

The WV Ethics Commission's **Committee on Standards of Conduct for Administrative Law Judges** answers questions from ALJs and provides advisory opinions to them regarding or interpreting the Rules on Standards of Conduct. It also considers complaints filed against ALJs.

The Ethics Commission is also responsible for the registration and reporting of lobbyists and for the collection of financial disclosure reports.

Minimum Ethical Standards Established by the Act

Private Gain

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

For example:

- You may not use your 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.
- You may not use subordinates to work on your personal projects or activities during work hours or compel them to do so on their own time.

Gifts

You may not solicit a gift unless it is for a charitable purpose from which you and your immediate family members derive no direct personal benefit. You 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." You may not solicit a subordinate for any gift, not even a gift for a charitable purpose.

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

- meals and beverages
- 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
- 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 your governmental agency.

Selling to Subordinates

Although they may choose to buy from you, you may not personally solicit (in person, by phone, or personal letter) private business from subordinates you direct, supervise or control. Solicitations directed to the public at large for sale of property which you are not regularly engaged in selling, are permitted.

Voting*

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

NOTE: Legislative voting is governed by a separate provision in the Act that permits voting by Legislators after obtaining a ruling from the presiding officer in their chamber regarding any potential conflict situation.

(*See **Voting** brochure for detailed information.)

Private Interests in Public Contracts, Purchases & Sales

You may not have a financial interest in any contract, purchase or sale over which your public position gives you control; nor may your spouse, your dependent parents or dependent children, unless the total value of the contracts, purchases or sales is less than \$1,000 in a calendar year. This provision applies only to: (1) those contracts your job gives you authority to award or control, and (2) those purchases and sales you are authorized to make or direct others to make.

The Commission has authority to grant your agency a hardship exemption from this provision of the Ethics Act. NOTE: 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 statute on voting.

Licensing & Rate-Making

You may not take official action on a license or ratemaking matter affecting an entity in which you, or the members of your immediate family, own or control a 10% or greater interest. In addition, UNLESS you file a prior written public disclosure with your agency, you may not take official action on a license or rate-making matter affecting a person to whom the entity in which you have an interest has sold goods or services totaling more than \$1,000 during the preceding year.

Moonlighting or 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 twelve 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 governmental employer is required to submit these records to the Ethics Commission quarterly.

Private Pay Prohibited

Full-time public servants may not accept private pay for providing information or services that are within the scope of their public duties. In other words, they cannot sell, even on their own time, services their public position requires them to provide. This applies only to private work for people or businesses served as part of their public duties.

Note: Agencies may impose stricter rules of conduct in addition to those established by the WV Governmental Ethics Act.

These Limitations Apply During and After Government Service

Confidential Information: You may not, during or after government service, knowingly and improperly disclose confidential information acquired through your public position, or use it to further the personal interests of yourself or another person.

Prohibited Representation: The Ethics Act requires you to obtain your agency's consent before you represent a client in a matter in which you are or were substantially involved on behalf of the agency. This applies both during and after your government service.

The prohibition applies only to those matters in which you were 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 their agency

- (1) while they are with the agency, and
- (2) for **one year** after leaving the agency.

The 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 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.

This Section Applies to County Public Servants Only

Certain county personnel are also subject to a criminal statute which contains a similar, but more comprehensive public contract prohibition; W. Va. Code § 61-10-15 . The Ethics Commission is responsible for advising public servants about § 61-10-15 but has no role in its enforcement.

W. Va. Code § 61-10-15 applies to:

- (1) **elected county officials** (such as sheriff, 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.

§61-10-15 prohibits these designated county personnel 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 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.

§61-10-15 imposes strict limitations on **nepotism** in employment. County Officials may not hire their spouses or dependent family members. Further, County Commissioners, their spouses, and dependent family members are prohibited from working at **any** county office or agency.

There are certain very specific exceptions to this law. Please contact the Ethics Commission for detailed information.

Complaints

The Ethics Commission has sole responsibility for investigating and resolving violations of the Ethics Act. Any citizen who is aware of a violation of the Act may make a written complaint with the Commission. The Commission must consider all sworn complaints it receives.

The Commission may initiate complaints if it receives evidence of a material violation. Whether a complaint is initiated by a citizen or the Commission, the Commission only investigates those complaints which a three-member Probable Cause Review Board finds allege a material violation. Complaints that allege trivial or inconsequential violations are dismissed.

The Commission has authority to subpoena evidence and testimony although no person alleged to have violated the Act is required to give testimony. However, 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.

Persons found guilty of a material violation of the Act may be publicly reprimanded and fined up to five thousand dollars per violation. In appropriate circumstances, the Commission may order restitution or recommend that the person be removed from office or that his or her employment be terminated.

Bad Faith Complaint: If the Commission finds by clear and convincing evidence that a complaint was made in bad faith, either knowing the allegations are untrue or in reckless disregard for the truth, it may issue sanctions against the complainant. Possible sanctions include ordering the payment of reasonable attorney fees to the respondent, reimbursing the Commission for its investigative costs and being barred from filing any further complaints with the Commission.

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