



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**
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Charleston, West Virginia 25305-0440 • (304) 558-0444

Jimmy Wriston, P.E.
Secretary of Transportation
Commissioner of Highways

April 6, 2022

MEMORANDUM

TO: ALL DOT Employees

FROM: Jimmy D. Wriston, P.E. *JW*
Secretary of Transportation/
Commissioner of Highways

THRU: Rita Pauley *RP*
Assistant Commissioner

Alanna J. Keller, P.E.
Chief Transportation Engineer

SUBJECT: DOT 3.23 Employee Ethics and Conflict of Interest Policy

The Employee Ethics and Conflict of Interest Policy has been revised. The revisions are summarized in Section 8.0 Change Log.

Please carefully review this information; all DOT employees are affected by the new policy.

A copy of the policy can be found at -
<https://sites.google.com/wv.gov/dot/policies/volume-iii-payrollpersonnel>

If you have any questions, please contact Ms. Kathryn Hill, Personnel Division, at (304) 414-6824 or via email at Kathryn.L.Hill@wv.gov.



West Virginia Department of Transportation Policy: **Employee Ethics and Conflict of Interest** *Issued by the Secretary of Transportation*

Policy No: DOT 3.23

Issue Date: 11/01/2004

Revised: 04/06/2022

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1.0 PURPOSE

The purpose of this policy is to establish policies and processes concerning employee ethics and conflict of interest.

2.0 SCOPE

This policy includes procedures applicable to all Department of Transportation employees, of all classifications excluding the Parkways Authority.

3.0 DEFINITIONS

- 3.1 **Agency:** Any authority, bureau, commission, or Division, or similar cabinet subpart of the Department of Transportation.
- 3.2 **Agency Head:** Chief executive officer of any agency.
- 3.3 **Employee:** A person who lawfully occupies a position in a DOT agency and who is paid a wage or salary and who has not severed the employee-employer relationship.

4.0 POLICY

4.1 Introduction

- A. The West Virginia Government Ethics Act of 1989 (amended in 1995) established a code of conduct to help public officials and public employees avoid conflicts between their personal interests and their public (job) responsibilities. It tells state employees what kinds of conduct may be considered unethical (and therefore unlawful) and gives official approval to conduct that is acceptable according to the Act.
- B. The West Virginia Ethics Commission consists of nine members appointed by the Governor with the advice and consent of the Senate. The Commission meets monthly and its Committees meet on an as-needed basis. The Commission is supported by a staff of six full-time employees. Additional and up-to-date information is available at <https://ethics.wv.gov/about/Pages/default.aspx>.
- C. The primary responsibility of the Commission is to handle, in a confidential manner, questions from employees covered by the Ethics Act. They publish information on Ethics concerns, issue advisory opinions for employees who wish to make sure their own conduct is not a violation of the Act, and handle

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complaints made against employees (by other employees) of suspected Ethics violations. They may impose fines and recommend disciplinary action.

- D. All West Virginia Department of Transportation (WVDOT) employees are covered by the Ethics Act. The purpose of this policy is to make WVDOT employees aware of the Act and what it requires of them. This policy draws its authority from the Ethics Commission's Legislative Rules and other publications, as well as the Ethics Act itself.
- E. In all cases where the WVDOT holds its employees to a stricter standard than what the Ethics Act requires, WVDOT rules are to be followed. The West Virginia State Code requires Division of Highways (DOH) employees, in particular, to follow certain ethics rules not expressed (or not regulated to as great an extent) in the Ethics Act. In these situations, DOH regulations prevail.
- F. Furthermore, many of the Ethics Act violations mentioned in this chapter may also involve disciplinary action taken by the WVDOT or any of its agencies, in addition to any penalties prescribed by the Ethics Commission.

4.2 Prohibitions Against Private Gain

WVDOT employees will use their professional positions, WVDOT property, and their on-duty time for the benefit of the WVDOT and the public in general - not for their own private gain or the private gain of any other person(s) or entity. Following, are examples of what is meant by this statement.

- A. The use of WVDOT supplies or equipment for personal projects or activities is prohibited.
- B. Employees may not work on personal projects during time for which the WVDOT pays them.
- C. Employees may not use subordinate employees to work on their own personal projects or activities during work hours or compel subordinates to do so on their own time.

4.3 Gifts to Employees

- A. Employees may not solicit a gift unless it is for a charitable purpose from which they and their immediate families receive no direct personal benefit.
- B. Supervisors may not solicit subordinate employees for any gift – not even a gift for a charitable purpose.
- C. Refer to the *DOT 3.18 Political Activities* policy for matters related to political activities and appropriate ethics.

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- D. Employees may not solicit or accept gifts from lobbyists, or "interested persons" (those who have a financial interest in the affairs of the State or of a State agency), unless the gift fits into one of the following categories:
1. Meals and beverages,
 2. Unsolicited gifts of a value of \$25.00 or less,
 3. Ceremonial gifts or awards of insignificant value,
 4. Reasonable expenses incurred in appearing at a speaking engagement,
 5. Reasonable honoraria defined in the WV Ethics Commission Legislative Rule as being "payment given in recognition of published works, appearances, speeches and presentations which is not intended as consideration for the value of such services",
 6. Free tickets to political, charitable, or cultural events customarily given as a courtesy to the office, but not sporting events,
 7. Purely private and personal gifts, or
 8. Lawful political contributions.

4.4 Selling to Subordinates

Employees may not personally solicit in person, by phone, or any other form of communication, private business from subordinates under their supervision. This does not prohibit an employee from doing business with a supervisor but does prohibit the supervisor's solicitation of business. Solicitations directed to the public at large or for property of a kind which the employee is not regularly engaged in selling are permitted.

4.5 Prohibitions Against Private Interests in Public Matters

- A. WVDOT employees may not have a financial interest in any contract, purchase, or sale over which their public position gives them control; nor may their spouses, dependent parents, dependent children, or any business in which WVDOT employees or these listed family members have an ownership interest greater than 10%. This provision applies only to:
1. Contracts that the employee's job gives them authority to award and control, and
 2. Purchases and sales that employees are authorized to make or direct others to make.

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In the event that a product or service is needed that cannot practically be procured without violating this provision, the Ethics Commission can grant a hardship exemption from this provision of the Ethics Act.

- B. Highways employees are further restricted, under W. Va. Code §17-2A-5, as follows:
1. No person who is employed by or holds any official position or ownership (including stock ownership) in any entity selling or furnishing materials to the Division of Highways for road construction or maintenance may be employed by the Division of Highways.
 2. Any Division of Highways employee who gains employment, an official position, or ownership, including stock ownership, in any entity selling or furnishing materials to the Division of Highways for road construction or maintenance must vacate or be removed from Highway's employment immediately.
 3. No Division of Highways employee can be a candidate for or hold any public office or be a member of any political party committee. Refer to the *DOT 3.18 Political Activities* policy.
- C. In addition, all WVDOT employees are subject to the following federal regulations:
1. No employee or other person contracted by the WVDOT who is authorized to negotiate, make, accept, or approve any contract or subcontract connected with a project may have, directly or indirectly, any financial or personal interest in the contract or subcontract.
 2. No employee may have, directly or indirectly, any financial or personal interest in any real property acquired for a project unless the interest is openly disclosed in the WVDOT's public record, and unless the employee has not participated in acquiring the property for the WVDOT.

4.6 Safeguarding Confidential Information

Employees may not, during or after WVDOT employment, knowingly and improperly disclose confidential information acquired through their positions or use it to further their own personal interests or those of another person or entity.

4.7 Prohibited Representation

An employee must obtain the consent of the employee's agency before representing a client in a matter in which the employee is or was substantially involved on behalf of the

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agency. This applies to issues in which the employee is or was involved in a decision making, advisory, or staff support capacity – during or after the employee’s service to the WVDOT.

4.8 Limitations on Practice

Certain WVDOT employees in agencies authorized to hear contested cases or make regulations, primarily appointed officials, attorneys, and accountants are prohibited from representing persons before their agency. This applies to such employees while they are with their agency and for six (6) months after leaving their agency. The prohibition applies to representation in contested cases, regulation filings, license or permit applications, rate-making proceedings, and to influence the expenditure of public funds. The Ethics Commission can grant an exemption from this petition.

4.9 Licensing and Rate-Making Proceedings

Employees may not take official action on a license or rate-making matter affecting an entity in which they, or members of their immediate families, own or control a ten (10) percent or greater interest. In addition, unless an employee files a prior written public disclosure with the employee’s agency, the employee may not take official action on a license or rate-making matter affecting a person to whom such an entity has sold goods or services totaling more than \$1000.00 during the preceding year.

4.10 Moonlighting and Changing Jobs

- A. Employees may not seek employment with, be employed by, or seek to sell or lease real or personal property to any person or business:
 - 1. That has a matter before the agency on which they are taking, or a subordinate is known to be taking, regulatory action, or
 - 2. That had, within the preceding twelve (12) months, a matter on which they took, or a subordinate is known to have taken, regulatory action.

The Ethics Commission can grant an exemption from this prohibition.

- B. Employees may not take personal regulatory action on matters affecting a person by whom they are secondarily employed or with whom they are seeking employment or have an agreement concerning future employment. Refer to the *DOT 3.28 Secondary Employment* policy.
- C. Employees 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 they serve as part of their public duties.

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5.0 Ethics Processes

5.1 Seeking Advisory Opinions

Employees who are not sure if their own actions or actions that they are considering taking are in compliance with the Ethics Act, should take the following steps in seeking an Advisory Opinion.

- A. Employees may consult the immediate supervisor. This individual may, by their own experience and knowledge of agency procedures, know whether the action would be considered *ethical* or not. In addition, the action may be regulated by agency procedures but not by the Ethics Commission.
- B. Employees may wish to seek advice from an agency attorney, the Human Resources Division, or the Civil Rights Compliance Division to determine if the conduct or action would violate another law or DOT policy.
- C. Employees may seek an informal opinion from the Ethics Commission staff by calling (304) 558-0664 or by email at ethics@wv.gov. The response will only go to the employee requesting it and may be relied on by the employee.
- D. An employee may make a written request to the West Virginia Ethics Commission for a formal ruling on whether the conduct in question is permissible under the Ethics Act.
 1. The Commission's decision, in the form of an Advisory Opinion, establishes whether the conduct is or is not permissible.
 2. If the Commission's Advisory Opinion approves certain conduct, the person who has made the request is immunized against any subsequent complaint that the conduct violates the Ethics Act.
 3. Other persons acting in good faith reliance on such an Advisory Opinion are likewise immunized.
 4. The identity of persons making requests is not made public. To the fullest extent possible, any material that identifies the subject of a ruling is deleted before the Commission's Advisory Opinions are made public. The published Advisory Opinion refers to the requestor only by position, e.g., a Division of Highways manager or a Division of Motor Vehicles employee.
 5. The Commission will not issue an Advisory Opinion to answer a person's question about the actions or proposed actions of another person.

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6. Formal requests may be made (in writing only) to the Commission at the following address:

WV Ethics Commission
1207 Quarrier St.
Charleston, WV 25301

There is no particular form necessary to make a request and no specific format that must be followed.

5.2 Filing Ethics Complaints

Any employee or citizen who is aware of a violation of the Ethics Act may make a written complaint with the Ethics Commission. If the complainant is an employee, they need not go through a supervisor or any other manager or division to file a complaint. The Commission must consider all sworn complaints it receives. Those found to allege a material violation of the Act are investigated. Complaints that allege trivial or inconsequential violations, will not be acted upon by the Commission.

- A. The Ethics Commission has authority to publicly reprimand and fine (up to \$1,000) those that it finds to be guilty of a material violation of the Act. In appropriate circumstances, the Commission may order restitution or recommend that the offending employee be removed from office or discharged from employment.
- B. Employees are urged to file complaints only upon observing suspected Ethics Act violations, and never for vengeful or petty reasons. If the Commission finds that a complaint is without merit and was made in bad faith, it shall force the accuser to pay costs to the person(s) against whom the complaint was made.

8.0 CHANGE LOG

April 6, 2022 –

- Reformatted policy to DOT.
- Added definitions.
- Updated information in 4.1. B. concerning the Ethics Commission.
- Clarified that an employee does not need to receive permission to seek an ethics opinion or file a complaint.

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Approved by:



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