

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
ADMINISTRATIVE PROCEDURES
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SUBJECT: PAYROLL/PERSONNEL
CHAPTER TITLE: EMPLOYEE ETHICS AND CONFLICT OF INTEREST

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A quarterly newsletter published by the West Virginia Ethics Commission. The available issues are displayed here - print out or save, if you wish to retain.

I. **INTRODUCTION**

Effective: 11/1/2004

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.

The West Virginia Ethics Commission was created to implement, interpret, and enforce the Ethics Act. The Commission is made up of twelve part-time citizens, 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. The West Virginia Senate must approve their appointments. The Commission is supported by a small full-time staff.

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

All West Virginia Department of Transportation (WVDOT) employees are covered by the Ethics Act. The purpose of this chapter is to make WVDOT employees aware of the Act and what it requires of them. This Procedure draws its authority from the Ethics Commission's Legislative Rules and other publications, as well as the Ethics Act itself.

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.

Furthermore, many of the Ethics Act violations mentioned in this chapter may also involve disciplinary action invoked by the WVDOT or any of its member agencies, in addition to any penalties prescribed by the Ethics Commission. For more information, refer to the appropriate chapter of the WVDOT Administrative Procedures, or applicable agency Procedures.



II. ETHICS AND CONFLICT OF INTEREST POLICIES

Effective: 11/1/2004

A. PROHIBITIONS AGAINST PRIVATE GAIN

WVDOT employees will use their professional positions, WVDOT property, and their on-duty time for the benefit of the Department 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.

1. The use of WVDOT supplies or equipment for personal projects or activities is prohibited.
2. Employees may not work on personal projects during time for which the Department pays them.
3. 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.

B. GIFTS TO EMPLOYEES

Effective: 11/1/2004

1. 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.

2. Supervisors may not solicit subordinate employees for any gift – not even a gift for a charitable purpose.
3. The Ethics Act does not prohibit the solicitation of political contributions. However, West Virginia State Code (3-8-12[h]), as interpreted by DOT Administrative Procedures, Volume III, Chapter 18, does prohibit employees from soliciting political contributions from classified employees.
4. 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:
 - a. meals and beverages,
 - b. unsolicited gifts of a value of \$25.00 or less,
 - c. ceremonial gifts or awards of insignificant value,
 - d. reasonable expenses incurred in appearing at a speaking engagement,
 - e. reasonable honoraria (defined in the *WV Ethics Commission Legislative Rules* 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"),
 - f. free tickets to political, charitable, or cultural events customarily given as a courtesy to the office (not sporting events),
 - g. purely private and personal gifts,
 - h. lawful political contributions.

C. SELLING TO SUBORDINATES

Effective: 11/1/2004

Employees may not personally solicit (in person, by phone, or personal letter) 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.

D. PROHIBITIONS AGAINST PRIVATE INTERESTS IN PUBLIC MATTERS

1. DOT 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 DOT employees or these listed family members have an ownership interest greater than 10%. This provision applies only to:
 - a. contracts that the employee's job gives them authority to award and control, and
 - b. purchases and sales that employees are authorized to make or direct others to make.

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.

2. Highways employees are further restricted, under West Virginia State Code (§17-2A-5), as follows:
 - a. 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.
 - b. 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 Highways employment immediately.
 - c. No Division of Highways employee can be a candidate for, or hold any public office or be a member of any political party committee. Political activities of employees are addressed in Volume III, Chapter 18 of the DOT Administrative Procedures.
3. In addition, all DOT employees are subject to the following federal regulations:
 - a. No employee (or other person contracted by the DOT) 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.
 - b. 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 DOT's public record, and unless the employee has not participated in acquiring the property for the DOT.

E. SAFEGUARDING CONFIDENTIAL INFORMATION

Effective: 11/1/2004

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

F. PROHIBITED REPRESENTATION

An employee must obtain the consent of his or her agency before representing a client in a matter in which the employee is or was substantially involved on behalf of the 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 DOT.

G. LIMITATIONS ON PRACTICE

Certain DOT employees in agencies authorized to hear contested cases or make regulations (namely, 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 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.

H. LICENSING AND RATE-MAKING PROCEEDINGS

Effective: 11/1/2004

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 percent or greater interest. In addition, unless an employee files a prior written public disclosure with his or her agency, he or she 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.



I. MOONLIGHTING AND CHANGING JOBS

1. Employees may not seek employment with, be employed by, or seek to 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 can grant an exemption from this prohibition.

2. 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.
3. 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.

J. EXAMPLES OF PRACTICES THAT MAY BE CONSIDERED UNETHICAL

Effective: 11/1/2004

The information in this section is in no way intended to be a complete list of violations of the Ethics Act. Offered here are a few examples of likely violations, some of which may not be immediately recognized by many employees as being violations. The intent is to inform and to create an awareness of the kinds of behavior that may be interpreted as being unethical. Employees having questions regarding a personal situation, or that of another employee, are advised to pursue resolution through the Ethics Processes given in Section "III." These examples are derived from the *WV Ethics Review*, a quarterly publication of the West Virginia Ethics Commission. Employees may contact Transportation Human Resources Division or the Equal Employment Opportunity office for an opportunity to read the *WV Ethics Review*.

1. A State Police Officer wanted to use the title "Trooper" in an advertisement for his privately operated driving school. The Ethics Commission found that this would be an inappropriate use of office for private gain. This principle would likely apply to any active DOT employee using a professional designation with a phrase such as "ten years of experience with the Division of Highways" in advertising for private business.
2. On the subject of a State employee using the State's long distance phone system for personal calls, the Commission ruled: "Because the general public is not permitted to use the State's long distance phone system and realize the significant cost saving of doing so, it would be a prohibited use of office for private gain for a State agency to permit its personnel to make private use of the State's phone system, even if the user reimbursed

the agency the cost of the calls made." Obviously, if the charges were billed to the employee's home phone (such as would be the case if a credit card is used), it would not be a violation.

3. A high-level agency administrator owns approximately 20% of a private corporation that provides services to companies in an industry that is regulated by his public agency. The Commission ruled that this would be a violation of the Ethics Act.



III. ETHICS PROCESSES

Effective: 11/1/2004

A. **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.

1. Consult your immediate supervisor. This individual may, by his or her 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.
2. Contact (DOH) Legal Division. This contact may be by telephone, but a letter (traditional or electronic) may be more effective. Also, Transportation Human Resources or Equal Employment Opportunity Division may be able to advise, based upon similar situations expressed in the *WV Ethics Review*.
3. Having gone through the previous two steps, an employee may (with the approval of DOH Legal Division) make a written request to the West Virginia Ethics Commission for a ruling on whether the conduct in question is permissible under the Ethics Act.
 - a. The Commission's decision, in the form of an Advisory Opinion, establishes whether the conduct is or is not permissible.
 - b. 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.
 - c. Other persons acting in good faith reliance on such an Advisory Opinion are likewise immunized.
 - d. 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 DOH Engineer or a Division of Motor Vehicles employee.

- e. The Commission will not issue an Advisory Opinion to answer a person's question about the actions or proposed actions of another person.
- f. With the approval of Legal Division, 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.

B. FILING ETHICS COMPLAINTS

Effective: 11/1/2004

Any employee (in fact, any citizen) who is aware of a violation of the Ethics Act may make a written complaint with the Ethics Commission. The employee 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.

1. 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.
2. 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.

