WEST VIRGINIA CODE CHAPTER 6B ARTICLE 2B

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§6B-2B-1. Definitions.

As used in this article:

(a) “Advertising” means publishing, distributing, disseminating, communicating, or displaying information to the public through audio, visual, or other media tools with the purpose of promoting the public official or a political party. “Advertising” may include, but is not limited to, billboard, radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social media, websites, and other forms of publication, dissemination, display, or communication.

(b) “Agent” means any volunteer or employee, contractual or permanent, serving at the discretion of a public official or public employee.

(c) “Educational materials” means publications, guides, calendars, handouts, pamphlets, reports, or booklets intended to provide information about the public official or governmental office. It includes information or details about the office, services the office provides to the public, updates on laws and services, and other informational items that are intended to educate the public.

(d) “Instructional material” means written instructions explaining or detailing steps for completion of a governmental agency document or form.

(e) “Likeness” means a photograph, drawing, or other depiction of an individual.

(f) “Mass media communication” means communication through audio, visual, or other media tools, including U.S. mail, electronic mail, and social media, intended for general dissemination to the public. Examples include mass mailing by U.S. mail, list-serve emails and streaming clips on websites. It does not include: (i) Regular responses to constituent requests or questions during the normal course of business; or (ii) communications that are authorized or required by law to be publicly disseminated, such as legal notices.

(g) “Press release” means a written, audio, or video communication issued by an official or agency to the public or to members and organizations of the news media to report specific but brief information about an event, circumstance, or other happening.

(h) “Public employee” means any full-time or part-time employee of any state, or political subdivision of the state, and their respective boards, agencies, departments, and commissions, or in any other regional or local governmental agency.

(i) “Public official” means any person who is elected or appointed to any state, county, or municipal office or position, including boards, agencies, departments, and commissions, or in any other regional or local governmental agency.

(j) “Public payroll” means payment of public moneys as a wage or salary from the state, or

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political subdivision of the state, or any other regional or local governmental agency, whether accepted or not.

(k) “Social media” means forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content. It includes web and mobile-based technologies which are used to turn communication to interactive dialogue among organizations, communities, and individuals. Examples include, but are not limited to, Facebook, Myspace, Twitter, and YouTube.

(l) “Trinkets” means items of tangible personal property that are not vital or necessary to the duties of the public official’s or public employee’s office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches, and bags.

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§6B-2B-2. Limitations on a public official from using his or her name or likeness.

(a) Trinkets. – Public officials, their agents, or anyone on public payroll may not place the public official's name or likeness on trinkets paid for with public funds: Provided, That when appropriate and reasonable, public officials may expend a minimal amount of public funds for the purchase of pens, pencils, or other markers to be used during ceremonial signings.

(b) Advertising. – (1) Public officials, their agents, or anyone on public payroll may not use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish, or display the public official's name or likeness for the purpose of advertising to the public.

(2) Notwithstanding the prohibitions in subdivision (1) of this subsection, the following conduct is not prohibited:

(A) A public official's name and likeness may be used in a public announcement or mass media communication when necessary, reasonable, and appropriate to relay specific public safety, health, or emergency information.

(B) A public official's name and likeness may appear on an agency's social media and website if it complies with §6B-2B-3 of this code.

(3) Banners and table skirts are considered advertising and may not include the public official's name or likeness.

(4) Nothing in this article shall be interpreted as prohibiting public officials from using public funds to communicate with constituents in the normal course of their duties as public officials if the communications do not include any reference to voting in favor of the public official in an election.

(c) Vehicles. – Public officials, their agents, or any person on public payroll may not use or place the public official's name or likeness on any publicly owned vehicles.

(d) Educational Materials. –

A public official's name or likeness may be placed on any educational material, that is paid for with public funds, so long as the primary purpose of the material is to provide information about the processes, operations, structure, functions, or history of an agency, agencies, or branch of government, or to provide lists of contact information or other identifying information about a public official. Educational materials in which the name and likeness of an official may appear include, but are not limited to: directories; reports; reference books; and legislative publications, such as the West Virginia Blue Book and the Legislative Manual.

(e) Press releases. – Notwithstanding any other provision of law, the name and likeness of a

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public official may be included in a press release, produced with public funds and which is disseminated by any means, if that press release is intended for a legitimate news or informational purpose and, considered as a whole, does not feature or present the public official in a form, manner, or context which is intended to promote the official. A press release produced with public funds may not request, solicit, or promote voting for any official or political party.

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§6B-2B-3. Use of public official's name or likeness on agency website or social media.

(a) A public official's name and likeness may appear on a public agency's website and on the agency's social media accounts or pages in any of the following circumstances:

(1) The public official's name and likeness appears on the agency's website or social media accounts or pages for the purpose of providing biographical information regarding the public official;

(2) The public official's name and likeness appears in educational materials posted or otherwise shared on the agency's website or social media accounts or pages, so long as the educational materials comply with the requirements of §6B-2B-2(d) of this code;

(3) The public official's name and likeness appears in a press release posted or otherwise shared on the agency's website or social media accounts or pages, so long as the press release complies with the requirements of §6B-2B-2(e) of this code; or

(4) The public official's name and likeness appears on the agency's website or social media accounts or pages for any other purpose that is reasonable, incidental, appropriate, and has a primary purpose to promote the agency's mission and services rather than to promote the public official.

(b) The requirements of this section do not apply to a public official's personal or non-public agency social media accounts.

(c) A public agency's website or social media may not provide links or reference to a public official's or public employee's personal or campaign social media or website.

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§6B-2B-4. Exceptions to use of name or likeness.

(a) A public official may use his or her name or likeness on any official record or report, letterhead, document, or certificate or instructional material issued in the course of his or her duties as a public official: Provided, That other official documents used in the normal course of the agency, including, but not limited to, facsimile cover sheets, press release headers, office signage, and envelopes may include the public official's name: Provided, however, That when official documents are reproduced for distribution or dissemination to the public as educational material, the items are subject to the prohibitions in §6B-2B-2(d) of this code.

(b) When appropriate and reasonable, the West Virginia Division of Tourism may use a public official's name and likeness on material used for tourism promotion.

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration, or president of a public institution of higher education and who is engaged in teaching, research, consulting, coaching, recruiting, or publication activities: Provided, That the activity is approved as a part of an employment contract with the governing board of the institution of higher education or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(d) The prohibitions contained in §6B-2B-2 of this code do not apply to items paid for from the public official's campaign funds.

(e) The prohibitions contained in §6B-2B-2 of this code do not apply to items paid for with the public official's personal money.

(f) The prohibitions contained in §6B-2B-2 of this code do not apply to items or materials required by law to contain the public official's name or likeness.

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§6B-2B-5. Existing items as of the effective date.

(a) If a public official, public employee or public agency possesses items or materials in contravention of this rule or section five-c, article two of this chapter that were purchased prior to the effective date, the public official, public employee or public agency may not continue to distribute, disseminate, communicate or display publicly these items or materials.

(b) Notwithstanding the prohibition in subsection (a) of this section,

(1) Materials may be used publicly if the public official's name or likeness are permanently removed or covered: Provided, That a public official's name or likeness may be covered with a sticker, be marked out or obliterated in any other manner;

(2) The public agency may use the items or materials for internal use if they are not publicly distributed, disseminated, communicated or displayed; and

(3) When appropriate and in compliance with law, a public agency may donate the items to surplus, charity or an organization serving the poor and needy.

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§6B-2B-6. Allowance for exemption.

If any of the prohibitions contained in this article create an undue hardship or will cause significant financial impact upon the public agency to bring existing material, vehicles or items into compliance with this article, the public agency may seek a written exemption from the West Virginia Ethics Commission. In any request, the Ethics Commission shall make public the name of public agency seeking the exemption, along with the affected public official, if any.

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