WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED

SENATE BILL NO. 58
(Originating in the Committee on the Judiciary)

PASSED January 15, 1992
In Effect from Passage
AN ACT to amend and reenact sections three and five, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to advisory opinions subject to legislative rulemaking and review; and the exclusion of legislators and legislative staff from the prohibition against current or subsequent representation of clients in matters in which he or she participated in the legislative process.

Be it enacted by the Legislature of West Virginia:

That sections three and five, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-3. Advisory opinions; enforcement; applicability; legislative review; rulemaking.

A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or
4 proposed action violates the provisions of this chapter
5 or the provisions of section fifteen, article ten, chapter
6 sixty-one of this code and would thereby expose the
7 person to sanctions by the commission or criminal
8 prosecution. The commission shall respond within
9 thirty days from the receipt of the request by issuing
10 an advisory opinion on the matter raised in the
11 request. All advisory opinions shall be published and
12 indexed in the code of state rules by the secretary of
13 state: Provided, That before an advisory opinion is
14 made public, any material which may identify the
15 person who is the subject of the opinion shall, to the
16 fullest extent possible, be deleted and the identity of
17 the person shall not be revealed. A person subject to
18 the provisions of this chapter may rely upon the
19 published guidelines or an advisory opinion of the
20 commission, and any person acting in good faith
21 reliance on any such guideline or opinion shall be
22 immune from the sanctions of this chapter and the
23 sanctions of section fifteen, article ten, chapter sixty-
24 one of this code, and shall have an absolute defense to
25 any criminal prosecution for actions taken in good
26 faith reliance upon any such opinion or guideline in
27 regard to the sanctions of this chapter and the sanc-
28 tions of section fifteen, article ten, chapter sixty-one of
29 this code.

§6B-2-5. Ethical standards for elected and appointed officials
and public employees.

1 (a) Persons subject to section. — The provisions of
2 this section apply to all elected and appointed public
3 officials and public employees, whether full or part
4 time, in state, county, municipal governments and
5 their respective boards, agencies, departments and
6 commissions and in any other regional or local govern-
7 mental agency, including county school boards.

8 (b) Use of public office for private gain. — (1) A
9 public official or public employee may not knowingly
10 and intentionally use his or her office or the prestige
11 of his or her office for his or her own private gain or
12 that of another person. The performance of usual and
13 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.

(2) The Legislature, in enacting this subsection, relating to the use of public office or public employment for private gain, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of such public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within such categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Such 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.

(c) Gifts. — (1) A public official or public employee
may not solicit any gift unless the solicitation is for a
charitable purpose with no resulting direct pecuniary
benefit conferred upon the official or employee or his
or her immediate family: Provided, That no public
official or public employee may solicit for a charitable
purpose any gift from any person who is also an
official or employee of the state and whose position as
such is subordinate to the soliciting official or
employee: Provided, however, That nothing herein
shall prohibit a candidate for public office from
soliciting a lawful political contribution. No official or
employee may knowingly accept any gift, directly or
indirectly, from a lobbyist or from any person whom
the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind
with his or her agency;

(B) Is engaged in activities which are regulated or
controlled by his or her agency; or

(C) Has financial interests which may be substan-
tially and materially affected, in a manner distinguish-
able from the public generally, by the performance or
nonperformance of his official duties.

(2) Notwithstanding the provisions of subdivision (1)
of this subsection, a person who is a public official or
public employee may accept a gift described in this
subdivision, and there shall be a presumption that the
receipt of such gift does not impair the impartiality
and independent judgment of the person. This pre-
sumption may be rebutted only by direct objective
evidence that the gift did impair the impartiality and
independent judgment of the person or that the
person knew or had reason to know that the gift was
offered with the intent to impair his or her impartial-
ity and independent judgment. The provisions of
subdivision (1) of this subsection do not apply to:
(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The acceptance of an honorarium by an elected public official is prohibited. The commission shall, by legislative rule, establish guidelines for the acceptance of reasonable honorariums by all other public officials and public employees other than elected public officials.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The governor or his designee may, in the name of the state of West Virginia, accept and receive gifts from any public or private source. Any such gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the division of culture and history.

(d) Interests in public contracts. — (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public
official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this subsection is:

(A) An interest:

(i) Not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract; or

(B) An interest as a creditor:

(i) Not exceeding ten percent of the total indebtedness of a business; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract.
(3) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information. — 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.

(f) Prohibited representation. — With the exception of legislators and legislative staff, no present or former elected or appointed public official or public employee shall during or after his or her public employment or service represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other specific matter which arose during his or her period of public service or employment and in which he or she personally participated in a decision-making, advisory or staff support capacity. The provisions of this subsection shall apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on the first day of July, one thousand nine hundred eighty-nine and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) Limitation on practice before a board, agency, commission or department. — (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of six months after
the termination of his or her public service or public
employment with a governmental entity authorized to
hear contested cases or promulgate regulations, appear
in a representative capacity before the governmental
entity in which he or she serves or served or is or was
employed in the following matters:

(A) A contested case involving an administrative
sanction, action or refusal to act;
(B) To support or oppose a proposed regulation;
(C) To support or contest the issuance or denial of a
license or permit;
(D) A rate-making proceeding; and
(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes
any formal or informal appearance before, or any
written or oral communication with, any public
agency on behalf of any person: Provided, That
nothing contained in this subsection shall prohibit,
during any period, a former public official or
employee from being retained by or employed to
represent, assist, or act in a representative capacity on
behalf of the public agency by which he or she was
employed or in which he or she served. Nothing in
this subsection shall be construed to prevent a former
public official or employee from representing another
state, county, municipal or other governmental entity
before the governmental entity in which he or she
served or was employed within six months after the
termination of his or her employment or service in the
entity.

(3) A present or former public official or employee
may appear at any time in a representative capacity
before the Legislature, a county commission, city or
town council or county school board in relation to the
consideration of a statute, budget, ordinance, rule,
resolution or enactment.

(4) Members and former members of the Legislature
and professional employees and former professional
employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state, or of county or municipal governments including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Seeking employment with regulated person prohibited. — (1) No full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by, any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

(2) No person regulated by a governmental agency shall offer employment to a full-time public official or full-time public employee of the regulating governmental agency during the period of time the public official or employee works or serves in such agency.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the ethics
commission for an exemption from the prohibition
against seeking employment with a person who is or
may be regulated, when the person's education and
experience is such that the prohibition would, for all
practical purposes, deprive the person of the ability to
earn a livelihood in this state outside of the govern-
mental agency. The ethics commission shall by legisla-
tive rule establish general guidelines or standards for
granting an exemption, but shall decide upon each
application on a case-by-case basis.

(i) Members of the Legislature required to vote. —
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 presid-
ing 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.

(j) Limitations on participation in licensing and rate-
-making proceedings. — No public official or employee
may participate within the scope of his or her duties
as a public official or employee, except through
ministerial functions as defined in section three,
article one of this chapter, in any license or rate-
making proceeding that directly affects the license or
rates of any person, partnership, trust, business trust,
corporation or association in which the public official
or employee or his or her immediate family owns or
controls more than ten percent. No public official or
public employee may participate within the scope of
his or her duties as a public official or public
employee, except through ministerial functions as
defined in section three, article one of this chapter, in
any license or rate-making proceeding that directly
affects the license or rates of any person to whom the
public official or public employee or his or her
immediate family, or a partnership, trust, business
trust, corporation or association of which the public
official or employee, or his or her immediate family,
owns or controls more than ten percent, has sold goods
or services totaling more than one thousand dollars during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency’s proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to articles three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(k) Certain expenses prohibited. — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(l) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of such institution or has been approved by the employees’ department supervisor or the president of the institution by which the faculty or staff member is employed.

(m) The commission by legislative rule promulgated in accordance with chapter twenty-nine-a of this code may define further exemptions from this section as necessary or appropriate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 20th day of January, 1992.

Governor