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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

SENATE BILL NO. 58

*(Originating in the Committee
[REDACTED] on the Judiciary)*

PASSED

January 15, 1992

In Effect

from Passage

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.

1 A person subject to the provisions of this chapter
2 may make application in writing to the ethics commis-
3 sion 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

14 or the advancement of public policy goals or constitu-
15 ent services, without compensation, does not constitute
16 the use of prestige of office for private gain.

17 (2) The Legislature, in enacting this subsection,
18 relating to the use of public office or public employ-
19 ment for private gain, recognizes that there may be
20 certain public officials or public employees who bring
21 to their respective offices or employment their own
22 unique personal prestige which is based upon their
23 intelligence, education, experience, skills and abilities,
24 or other personal gifts or traits. In many cases, these
25 persons bring a personal prestige to their office or
26 employment which inures to the benefit of the state
27 and its citizens. Such persons may, in fact, be sought
28 by the state to serve in their office or employment
29 because, through their unusual gifts or traits, they
30 bring stature and recognition to their office or employ-
31 ment and to the state itself. While the office or
32 employment held or to be held by such persons may
33 have its own inherent prestige, it would be unfair to
34 such individuals and against the best interests of the
35 citizens of this state to deny such persons the right to
36 hold public office or be publicly employed on the
37 grounds that they would, in addition to the emolu-
38 ments of their office or employment, be in a position
39 to benefit financially from the personal prestige which
40 otherwise inheres to them. Accordingly, the commis-
41 sion is directed, by legislative rule, to establish
42 categories of such public officials and public
43 employees, identifying them generally by the office or
44 employment held, and offering persons who fit within
45 such categories the opportunity to apply for an exemp-
46 tion from the application of the provisions of this
47 subsection. Such exemptions may be granted by the
48 commission, on a case-by-case basis, when it is shown
49 that: (A) The public office held or the public employ-
50 ment engaged in is not such that it would ordinarily
51 be available or offered to a substantial number of the
52 citizens of this state; (B) the office held or the employ-
53 ment engaged in is such that it normally or specifically
54 requires a person who possesses personal prestige; and
55 (C) the person's employment contract or letter of

56 appointment provides or anticipates that the person
57 will gain financially from activities which are not a
58 part of his or her office or employment.

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

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

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

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

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

95 (A) Meals and beverages;

96 (B) Ceremonial gifts or awards which have insignif-
97 icant monetary value;

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

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

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

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

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

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

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

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

129 (d) *Interests in public contracts.* — (1) In addition to
130 the provisions of section fifteen, article ten, chapter
131 sixty-one of this code, no elected or appointed public

132 official or public employee or member of his or her
133 immediate family or business with which he or she is
134 associated may be a party to or have an interest in the
135 profits or benefits of a contract which such official or
136 employee may have direct authority to enter into, or
137 over which he or she may have control: *Provided*,
138 That nothing herein shall be construed to prevent or
139 make unlawful the employment of any person with
140 any governmental body: *Provided, however*, That
141 nothing herein shall be construed to prohibit a mem-
142 ber of the Legislature from entering into a contract
143 with any governmental body, or prohibit a part-time
144 appointed public official from entering into a contract
145 which such part-time appointed public official may
146 have direct authority to enter into or over which he or
147 she may have control when such official has been
148 recused from deciding or evaluating and excused from
149 voting on such contract and has fully disclosed the
150 extent of such interest in the contract.

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

161 (A) An interest:

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

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

166 (B) An interest as a creditor:

167 (i) Not exceeding ten percent of the total indebted-
168 ness of a business; or

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

171 (3) Where the provisions of subdivisions (1) and (2)
172 of this subsection would result in the loss of a quorum
173 in a public body or agency, in excessive cost, undue
174 hardship, or other substantial interference with the
175 operation of a state, county, municipality, county
176 school board or other governmental agency, the
177 affected governmental body or agency may make
178 written application to the ethics commission for an
179 exemption from subdivisions (1) and (2) of this
180 subsection.

181 (e) *Confidential information.* — No present or
182 former public official or employee may knowingly and
183 improperly disclose any confidential information
184 acquired by him or her in the course of his or her
185 official duties nor use such information to further his
186 or her personal interests or the interests of another
187 person.

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

207 (g) *Limitation on practice before a board, agency,*
208 *commission or department.* — (1) No elected or
209 appointed public official and no full-time staff attorney
210 or accountant shall, during his or her public service or
211 public employment or for a period of six months after

212 the termination of his or her public service or public
213 employment with a governmental entity authorized to
214 hear contested cases or promulgate regulations, appear
215 in a representative capacity before the governmental
216 entity in which he or she serves or served or is or was
217 employed in the following matters:

218 (A) A contested case involving an administrative
219 sanction, action or refusal to act;

220 (B) To support or oppose a proposed regulation;

221 (C) To support or contest the issuance or denial of a
222 license or permit;

223 (D) A rate-making proceeding; and

224 (E) To influence the expenditure of public funds.

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

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

248 (4) Members and former members of the Legislature
249 and professional employees and former professional

250 employees of the Legislature shall be permitted to
251 appear in a representative capacity on behalf of clients
252 before any governmental agency of the state, or of
253 county or municipal governments including county
254 school boards.

255 (5) An elected or appointed public official, full-time
256 staff attorney or accountant who would be adversely
257 affected by the provisions of this subsection may apply
258 to the ethics commission for an exemption from the
259 six months prohibition against appearing in a repre-
260 sentative capacity, when the person's education and
261 experience is such that the prohibition would, for all
262 practical purposes, deprive the person of the ability to
263 earn a livelihood in this state outside of the govern-
264 mental agency. The ethics commission shall by legisla-
265 tive rule establish general guidelines or standards for
266 granting an exemption or reducing the time period,
267 but shall decide each application on a case-by-case
268 basis.

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

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

287 (3) A full-time public official or full-time public
288 employee who would be adversely affected by the
289 provisions of this subsection may apply to the ethics

290 commission for an exemption from the prohibition
291 against seeking employment with a person who is or
292 may be regulated, when the person's education and
293 experience is such that the prohibition would, for all
294 practical purposes, deprive the person of the ability to
295 earn a livelihood in this state outside of the govern-
296 mental agency. The ethics commission shall by legisla-
297 tive rule establish general guidelines or standards for
298 granting an exemption, but shall decide upon each
299 application on a case-by-case basis.

300 (i) *Members of the Legislature required to vote.* —
301 Members of the Legislature who have asked to be
302 excused from voting or who have made inquiry as to
303 whether they should be excused from voting on a
304 particular matter and who are required by the presid-
305 ing officer of the House of Delegates or Senate of West
306 Virginia to vote under the rules of the particular
307 house shall not be guilty of any violation of ethics
308 under the provisions of this section for a vote so cast.

309 (j) *Limitations on participation in licensing and rate-*
310 *making proceedings.* — No public official or employee
311 may participate within the scope of his or her duties
312 as a public official or employee, except through
313 ministerial functions as defined in section three,
314 article one of this chapter, in any license or rate-
315 making proceeding that directly affects the license or
316 rates of any person, partnership, trust, business trust,
317 corporation or association in which the public official
318 or employee or his or her immediate family owns or
319 controls more than ten percent. No public official or
320 public employee may participate within the scope of
321 his or her duties as a public official or public
322 employee, except through ministerial functions as
323 defined in section three, article one of this chapter, in
324 any license or rate-making proceeding that directly
325 affects the license or rates of any person to whom the
326 public official or public employee or his or her
327 immediate family, or a partnership, trust, business
328 trust, corporation or association of which the public
329 official or employee, or his or her immediate family,
330 owns or controls more than ten percent, has sold goods


331 or services totaling more than one thousand dollars
332 during the preceding year, unless the public official or
333 public employee has filed a written statement
334 acknowledging such sale with the public agency and
335 the statement is entered in any public record of the
336 agency's proceedings. This subsection shall not be
337 construed to require the disclosure of clients of
338 attorneys or of patients or clients of persons licensed
339 pursuant to articles three, eight, fourteen, fourteen-a,
340 fifteen, sixteen, twenty, twenty-one or thirty-one,
341 chapter thirty of this code.

342 (k) *Certain expenses prohibited.* — No public official
343 or public employee shall knowingly request or accept
344 from any governmental entity compensation or reim-
345 bursement for any expenses actually paid by a lobbyist
346 and required by the provisions of this chapter to be
347 reported, or actually paid by any other person.

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

361 (m) The commission by legislative rule promulgated
362 in accordance with chapter twenty-nine-a of this code
363 may define further exemptions from this section as
364 necessary or appropriate.

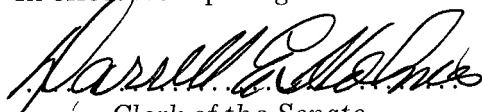
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

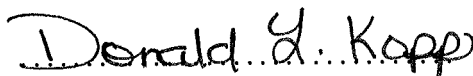

Chairman Senate Committee

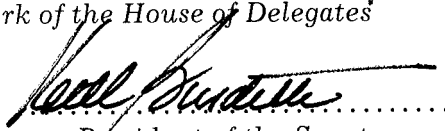

Chairman House Committee

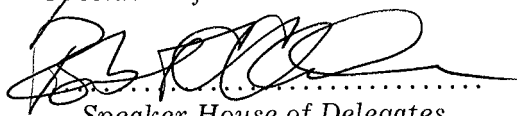
Originated in the Senate.

In effect from passage.

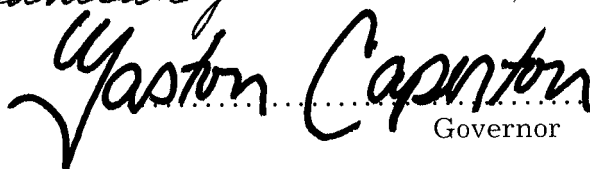

Clerk of the Senate


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

PRESENTED TO THE

GOVERNOR

Date 1/16/92

Time 11:45 AM

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