WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2801

(By Delegates Hrutkay, Amores, Pethtel, Pino and Stemple)

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Passed March 12, 2004

In Effect Ninety Days from Passage
AN ACT to amend and reenact §6B-2-3 and §6B-2-5 of the code of
West Virginia, 1931, as amended, clarifying the law relating to
the solicitation of donations by a member of the Legislature, and
requiring the ethics commission to furnish copies of advisory
opinions to the Legislature and the supreme court of appeals.

Be it enacted by the Legislature of West Virginia:

That §6B-2-3 and §6B-2-5 of the code of West Virginia, 1931, as
amended, be amended and reenacted, all 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; legisla-
tive review; rule making.
(a) 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 proposed action violates the provisions of this chapter or the provisions of section fifteen, article ten, chapter sixty-one of this code and would thereby expose the person to sanctions by the commission or criminal prosecution. The commission shall respond within thirty days from the receipt of the request by issuing an advisory opinion on the matter raised in the request. All advisory opinions shall be published and indexed in the code of state rules by the secretary of state: Provided, That before an advisory opinion is made public, any material which may identify the person who is the subject of the opinion shall, to the fullest extent possible, be deleted and the identity of the person shall not be revealed. A person subject to the provisions of this chapter may rely upon the published guidelines or an advisory opinion of the commission, and any person acting in good faith reliance on any such guideline or opinion shall be immune from the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon any such opinion or guideline in regard to the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code.

(b) By the first day of the third month of the calendar year, the ethics commission shall annually furnish copies of all advisory opinions issued during the preceding calendar year to the archives and history section of the division of culture and history, the office of the Clerk of the West Virginia House of Delegates, the office of the Clerk of the West Virginia Senate and the West Virginia Supreme Court of Appeals Law Library. Accompanying the initial delivery of the previous calendar year's advisory opinions after the enactment of this subsection, the commission shall supply each of these offices with copies
§6B-2-5. Ethical standards for elected and appointed officials and public employees.

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

(b) Use of public office for private gain.—(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and 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 (b), 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
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29 inherent prestige, it would be unfair to such individuals and
30 against the best interests of the citizens of this state to deny
31 such persons the right to hold public office or be publicly
32 employed on the grounds that they would, in addition to the
33 emoluments of their office or employment, be in a position to
34 benefit financially from the personal prestige which otherwise
35 inheres to them. Accordingly, the commission is directed, by
36 legislative rule, to establish categories of such public officials
37 and public employees, identifying them generally by the office
38 or employment held, and offering persons who fit within such
39 categories the opportunity to apply for an exemption from the
40 application of the provisions of this subsection. Such exemp-
41 tions may be granted by the commission, on a case-by-case
42 basis, when it is shown that: (A) The public office held or the
43 public employment engaged in is not such that it would
44 ordinarily be available or offered to a substantial number of the
45 citizens of this state; (B) the office held or the employment
46 engaged in is such that it normally or specifically requires a
47 person who possesses personal prestige; and (C) the person’s
48 employment contract or letter of appointment provides or
49 anticipates that the person will gain financially from activities
50 which are not a part of his or her office or employment.

51 (c) Gifts.—(1) A public official or public employee may
52 not solicit any gift unless the solicitation is for a charitable
53 purpose with no resulting direct pecuniary benefit conferred
54 upon the official or employee or his or her immediate family:
55 Provided, That no public official or public employee may
56 solicit for a charitable purpose any gift from any person who is
57 also an official or employee of the state and whose position as
58 such is subordinate to the soliciting official or employee:
59 Provided, however, That nothing herein shall prohibit a
60 candidate for public office from soliciting a lawful political
61 contribution. No official or employee may knowingly accept
62 any gift, directly or indirectly, from a lobbyist or from any
(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 substantially and materially affected, in a manner distinguishable 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 presumption 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 impartiality 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 commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when: (1) That official is a part-time elected public official; (2) the fee is not related to the official’s public position or duties; (3) the fee is for services provided by the public official that are related to the public official’s regular, nonpublic trade, profession, occupation, hobby or avocation; and (4) the honorarium is not provided in exchange for any promise or action on the part of the public official.

(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.
(6) Upon prior approval of the joint committee on government and finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the joint committee on government and finance authorizes payment of dues or other membership fees for the Legislature’s participation, and which assist this and other state legislatures and their staff through any of the following:

(i) Advancing the effectiveness, independence, and integrity of legislatures in the states of the United States;

(ii) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(iii) Representing the states and their legislatures in the American federal system of government;

(iv) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(v) Promoting cooperation between state legislatures in the United States and legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the joint committee on government and finance...
and with the secretary of state for publication in the state register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

“This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, and with the Secretary of State, and are available for public review.”

(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) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public servant has supervisory responsibility.

(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 contained in subsection (1). The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(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 presiding 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) Except as provided in this section, a person who is a
public official or public employee may not solicit private
business from a subordinate public official or public employee
whom he or she has the authority to direct, supervise or control.
A person who is a public official or public employee may
solicit private business from a subordinate public official or
public employee whom he or she has the authority to direct,
supervise or control when:

(A) The solicitation is a general solicitation directed to the
public at large through the mailing or other means of distribu-
tion of a letter, pamphlet, handbill, circular or other written or
printed media; or

(B) The solicitation is limited to the posting of a notice in
a communal work area; or

(C) The solicitation is for the sale of property of a kind that
the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private
business owned or operated by the person to which the subordi-
(n) 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Butcher
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___th day of April, 2004.

Governor
PRESENTED TO THE
GOVERNOR
DATE 4.1.84
TIME 4:35 PM