

# West Virginia Ethics Commission

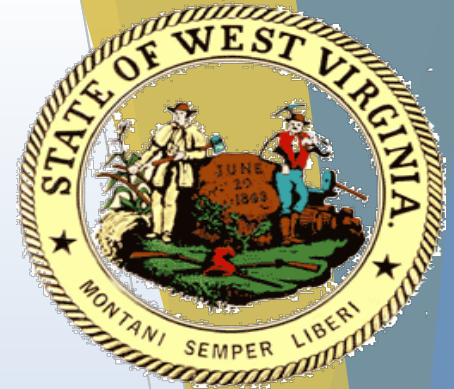
## 2022 Ethics and Open Meetings Acts Training



**Presented By:**

**Kimberly B. Weber**  
**Executive Director**

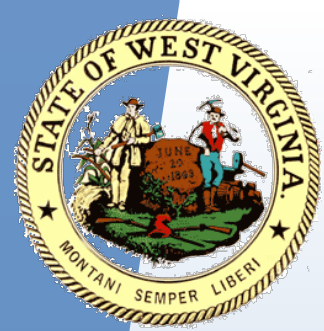
# West Virginia Ethics Commission



- \*School board eligibility
- \*W. Va. Code § 61-10-15 (County officials and employees)
- \*ALJ Code of Conduct
- \*Lobbyists Registration
- \*Financial Disclosure Statements

## **2004-15 Soil Conservation District Supervisors**

Soil Conservation District Supervisors need not file financial disclosure statements.

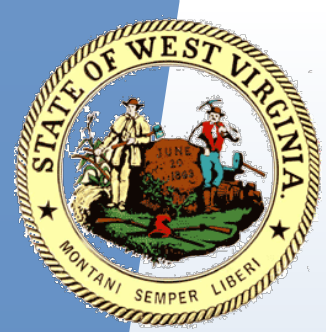


## School Board Eligibility

BOE member may not hold any other "public office," unless other office is uncompensated and unrelated to public schools.

W. Va. Code § 18-5-1a(a)(3)

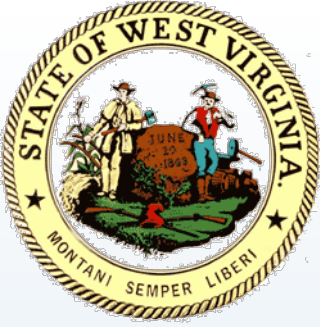




# School Board Eligibility

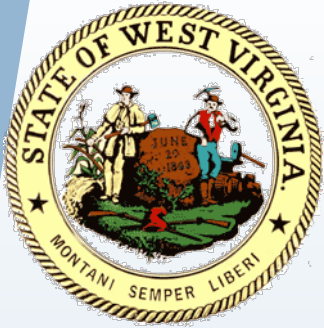
2003-01: Soil Conservation District





# Topics of Ethics Act

- Office for Private Gain
- Solicitation and Gifts
- Name/Likeness ("Trinkets")
- Prohibited Public Contracts
- Voting
- Conflicts of Interest
- Employment Restrictions



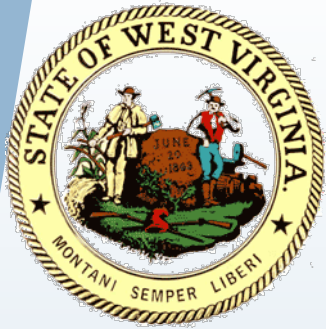
# Use of Public Office for Private Gain

W. Va. Code § 6B-2-5(b)

- May not use public resources, including time and subordinate staff, for someone's personal benefit.
- Ethics Act prohibits more than a *de minimis* use for personal purposes.







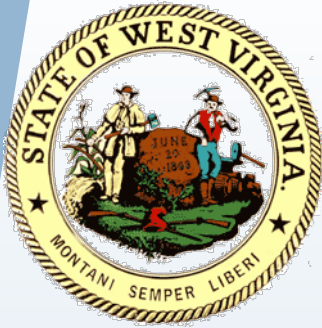
# Use of Public Office for Private Gain

**2021-15 County Health Department**



Agency may not allow its employees to use (more than de minimis amount of) their agency-provided cell phone as their personal cell phone unless the employees pay a reasonable fee to the agency. Even if unlimited plan.

No commercial or political campaign use.



# Use of Public Office for Private Gain

Agency employees and officials may not use their agency's Sam's Club card or similar shopping club memberships for personal purchases- even if the agency does not incur any additional costs.

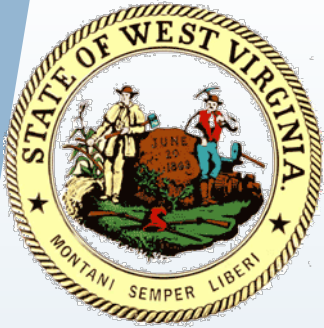
**Membership Discount**



AO 2010-18

CA





# Use of Public Office for Private Gain

W. Va. Code § 6B-2-5(b) Prestige of Office

Circuit Clerk tried to convince arresting police officer not to take him to jail.



- Statements like "You know I am the Circuit Clerk."
- Threats to retaliate against the arresting officer.

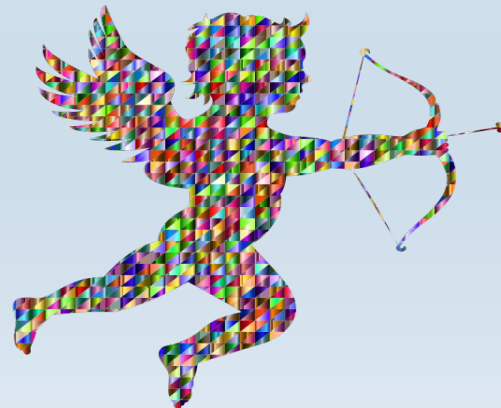
Agreed to settlement

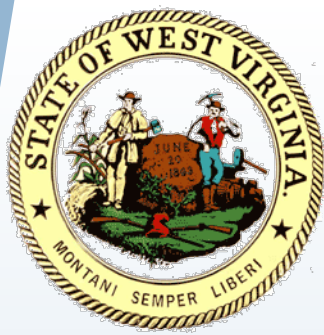


# Use of Public Office for Private Gain

W. Va. Code § 6B-2-5(b)

- A Prosecutor wanted to know if her boyfriend could serve as an Assistant Prosecutor.
- They did not live together or have a financial relationship.
- Prosecutor did not formally advertise the job opening, so the Commission held that the Requester's boyfriend received an unfair advantage in being hired.



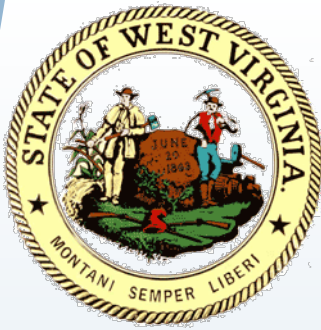


# Use of Public Office for Private Gain

## Nepotism

- "Nepotism" means favoritism shown or patronage granted in employment or working conditions by a public official or public employee to relatives or persons with whom the public official or public employee resides.
- "Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.



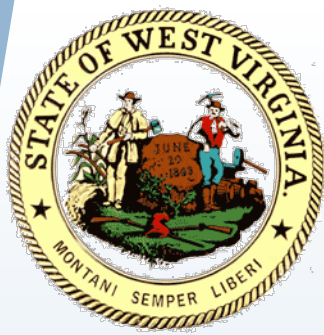


# Use of Public Office Private Gain Nepotism

- A public official or employee may not directly supervise or participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides.
- Exception: Required by law and independent third party involved.



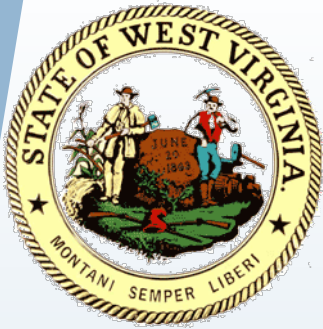
Legislative Rule at 158 C.S.R. § 6.



# Use of Public Office for Private Gain Nepotism

A.O. 2020-13 A principal's wife, sister, and brother-in-law may be employed in the same school where he or she serves as principal, but the principal may not be involved in hiring or supervising them.





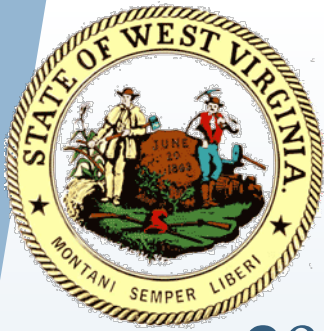
# Use of Public Office for Private Gain

## Unauthorized Spending

- The Ethics Commission only has authority to determine whether a proposed expenditure violates the private gain provision of the Act.
- The Commission considers, among other factors, whether the proposed expenditure is authorized elsewhere.
  - W. Va. Code
  - Legislative Rules
  - Attorney General Opinions
  - Auditor Opinion Letters
  - Agency's attorney





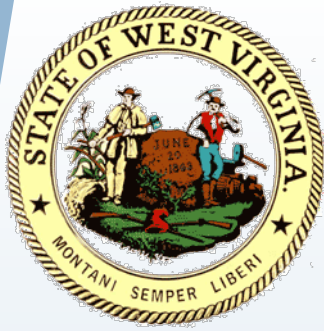


# Use of Public Office for Private Gain

## 2020 Employee Recognition/Retirement Events



- Food and beverages, entertainment, and gift or memento.
- Total public funds = \$25 per employee per year. May be allocated between events and employees. (Maximum \$100 per employee.)

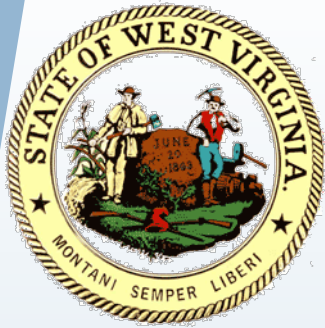


# Use of Public Office for Private Gain

## Paying for Meals

- Review applicable laws to determine whether there is express or implied authority for the expenditure.
- Unauthorized expenditures for meals violate the private gain provision of the Act if the overriding benefit is to the employee, or another person, and not the government agency.



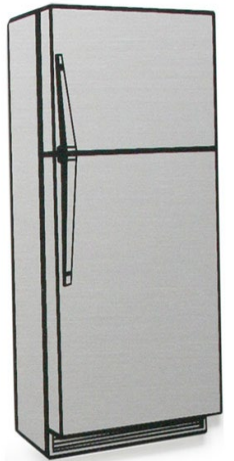


# Use of Public Office for Private Gain

## Spending Public Funds

QUESTION: May a public agency use public funds to purchase coffee makers or refrigerators for office employees?

A.O. 2016-09



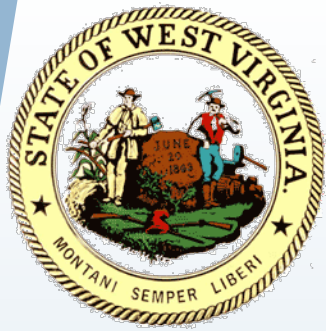


# Use of Public Office for Private Gain

## Retirement Gifts/Events

- May spend up to **\$100** of public funds to purchase plaque or another commemorative item.





# Use of Public Office for Private Gain

## Endorsements

- Do not **endorse commercial** products. Do not give testimonials such as town was a "satisfied customer."

Exception: Overriding public benefit





# Use of Public Office for Private Gain

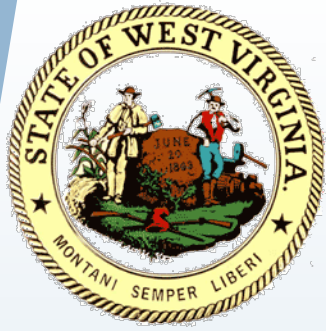
## Endorsements

**QUESTION:** May public educators appear in a software vendor's promotional video and articles demonstrating how West Virginia teachers and students use the vendor's products?

**ANSWER:** *See A.O. 2015-17*



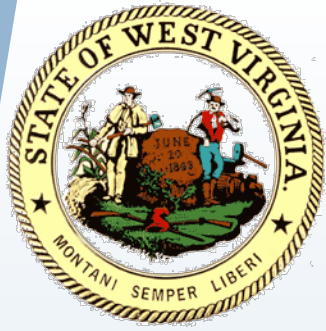




# Use of Public Office for Private Gain

## **2021-23 County Commission**

The Ethics Commission held that if the County Commission determines that building the proposed waterline extension project benefits the County by promoting tourism or economic development, then using American Rescue Plan funds for the project would not violate the Ethics Act even if the developer may uniquely benefit from the project.



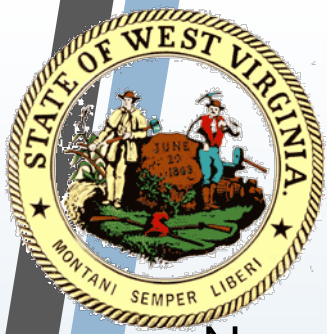
# Use of Public Office for Private Gain

## **2022-02** County Commission Employee

A county commission employee may be a candidate for and hold office on city council.

She must not campaign while she is on the clock at work.





# Confidential Info

W. Va. Code § 6B-2-5(e)

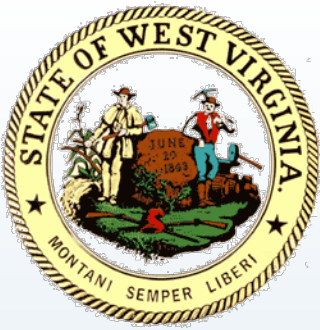
No present or former public official or employee may disclose confidential information or use that information to further his/her personal interests or the interests of another person. [Address, SS#, credit card, driver's license and marital status]

Executive Session not necessarily confidential

2022-01



**Improper disclosure of confidential information is a criminal misdemeanor!**



# Gift Rules

## No Gifts over \$25 from Interested Persons

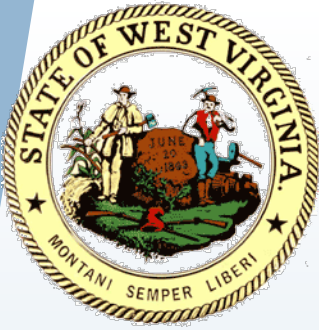
An interested person is:

- A Lobbyist

Or one who:

- Seeks or does business with the public servant's agency (vendor);
- Is regulated or controlled by the agency; or,
- Has a specific financial interest which may be substantially affected by the performance or nonperformance of official duties.



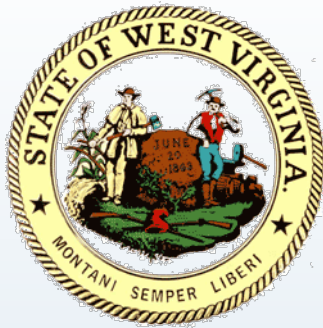


# Gift Rules

## Some Exceptions!

- Meals and beverages of any value if the person purchasing them is present
- Ceremonial gifts with insignificant value – for example, a plaque
- Reasonable travel, meals and lodging expenses for being a speaker at conference or benefit performance of public job. (May have to report on FDS.)
- Gifts that are purely private in nature

Ethics Commission Gift Guideline – outlines other exceptions



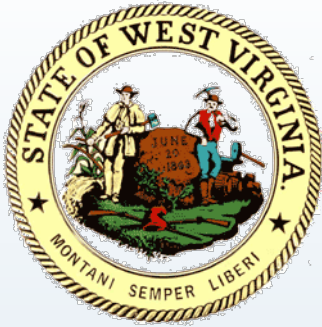
# Gift Rules

W. Va. Code § 6B-2-5(c)

Solicitation of gifts is generally prohibited (unless charitable purpose).







# Gift Rules

## Charitable Solicitations

W. Va. Code § 6B-2-5(c)

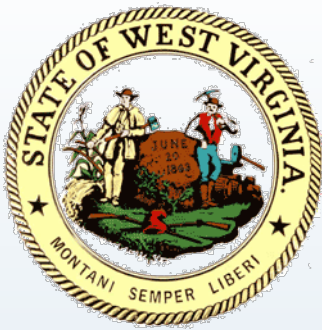
Gifts may only be solicited for a charitable purpose, such as the United Way.



Public agency may impose stricter standards.

Supervisors may not solicit contributions from a subordinate.

May solicit other public agencies 2019-11



# Gift Rules

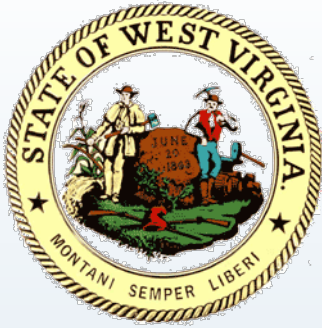
## Charitable Solicitations

W. Va. Code § 6B-2-5(c)

Mayor may appear in a video using his name and public title to promote and solicit donations for a local nonprofit drug and alcohol recovery center because it served a charitable purpose and was not a commercial business.

Advisory Opinion 2021-02





# Gift Rules

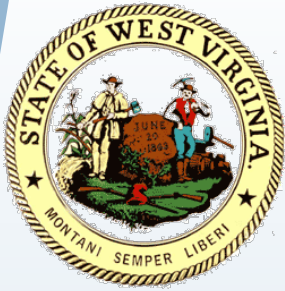
## Charitable Solicitations

W. Va. Code § 6B-2-5(c)

Health Department employees may solicit from local businesses and people to supplement public health programs.

AO 2005-02





# Public Official's Name or Likeness

May **not** use **public funds** or public resources to display the public official's name or likeness **for the purpose of promoting public official or political party**. W. Va. Code § 6B-2B-2(b).

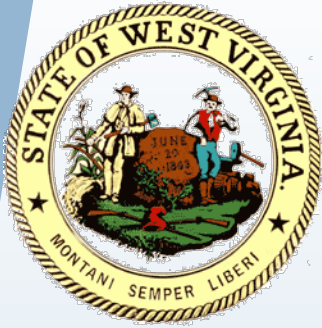




# Public Official's Name or Likeness

- May use name on letterhead, envelopes, educational materials, reports, certificates, office signs, press releases, bios, social media, and websites





# Limitations on Public Official's Name or Likeness

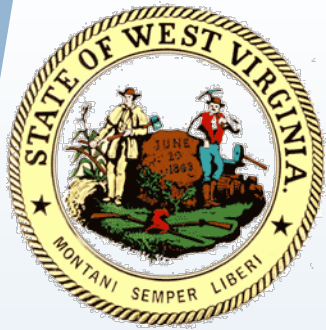


A town employee may not display a cup that contains a campaign slogan to work at Town Hall.

(The use of public resources to promote a political party.)

AO 2021-19





# Public Official's Name or Likeness

Effective on June 6, and will be codified in new Code sections, W. Va. Code §§ 5-6-4, 7-3-19, and 8-12-22. The law prohibits county and municipal entities from dedicating or naming any public building or public structure for a public official who is currently holding office.



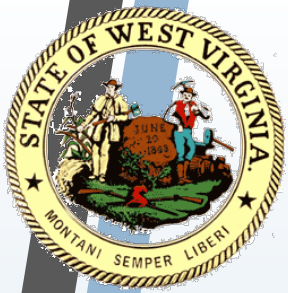


# Prohibited Interest in Agency Contracts

W. Va. Code § 6B-2-5(d)

Public servants may not have a financial interest in a public contract under their authority or control.





# Prohibited Interest in Agency Contracts

## **2010-20 Conservation Districts**

May not spend public funds in excess of \$1,000 to construct project on an elected board member's property without a contract exemption.

## **2013-25 Board Member of Conservation District**

A Conservation District may not reimburse landowner expenses where the provider of lime services is a member of the Conservation District Board unless the Conservation District seeks and obtains a contract exemption from the Ethics Commission.





# Prohibited Interest in Agency Contracts

W. Va. Code § 6B-2-5(d)

## 2013-50 State Agency Employees

State agency employees assigned to various Conservation Districts may participate in a state funded Agricultural Enhancement program that is administered by the Districts because they have no authority or control over these matters.





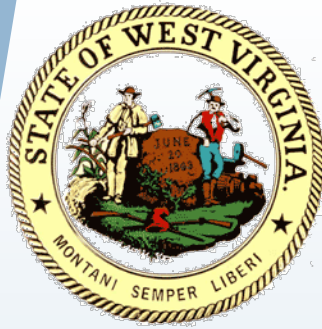


# Public Contract

## Exemptions

Ethics Commission has discretion to grant an exemption to public entity based upon undue hardship or excessive cost.





# Voting

W. Va. Code § 6B-2-5(j)

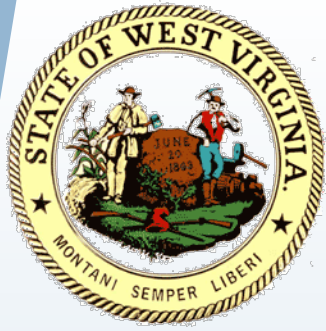


- May not vote if public official, or an immediate family member, or a business with which they or a family member is associated, has a financial interest.
- Public officials may not vote on a personnel matter involving a relative.

(Class exception - five similarly situated)

2019-08 hotel development in mayor's neighborhood





# Voting

## W. Va. Code § 6B-2-5(j)

- If member also serves on a non-profit, the agency may still make appropriations to the non-profit.
- Member or spouse may not vote if either is employed by non-profit.
- If Board member is unpaid, he/she may vote only if disclosed on agenda and at the meeting.





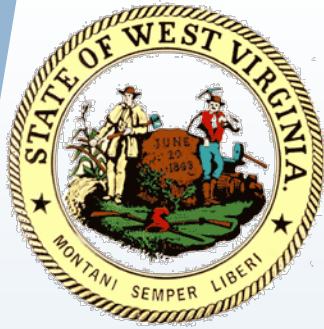
# Voting

## Proper Recusal

A public servant who is required to recuse himself or herself must:

- Fully disclose his or her interest
- Leave the room during both the discussion of, and the vote on, the issue
- Minutes must reflect recusal





# Employment Restrictions

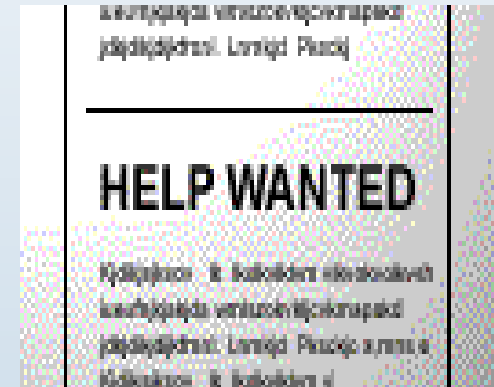
W. Va. Code § 6B-2-5(h)

**Full-time** public employees may not seek employment with, or buy, sell or lease property to or from, any person who:

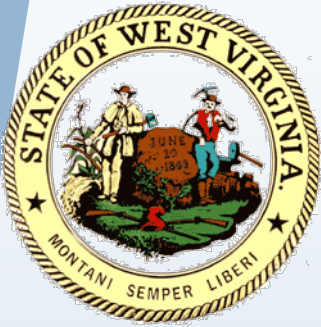
- Had a matter on which they or their subordinate took regulatory action within the past 12 months, or
- Currently has a matter before their agency on which they or a subordinate is working, or
- Is a vendor over which they exercise control

**Employment Exemptions available**

2019-17 and 2020-05



# Post-employment Restrictions

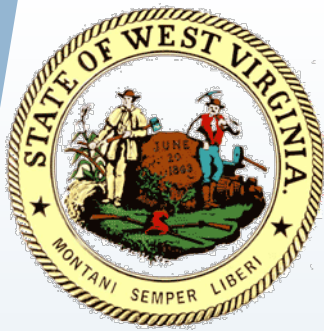


W. Va. Code § 6B-2-5(g)

## Revolving Door

- No elected or appointed public official or full-time staff attorney or accountant, shall:
- for ONE YEAR after the termination of that service, appear in a representative capacity before the entity he or she served in:
  - A contested administrative matter,
  - To support or oppose a proposed rule,
  - To support or oppose issuance of a license or permit,
  - Rate-making proceedings, or
  - To influence the expenditure of public funds

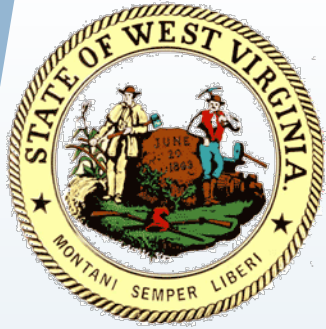




# Lobbying Contracts

The Governor signed [HB 3220](#) which becomes effective July 1, and will be codified as W. Va. Code § 6B-3-10. The new provision prescribes disclosure requirements for government agencies that contract for lobbying services, including filing lobbyist contracts with the Ethics Commission.



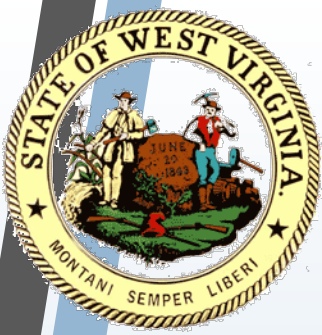


# Sanctions

W. Va. Code § 6B-2-4(s)(1)

- Public reprimand
- Restitution
- Fines of \$5,000 per violation
- Reimbursement to the Commission
- Recommendation that a Respondent be terminated from employment or removed from office.

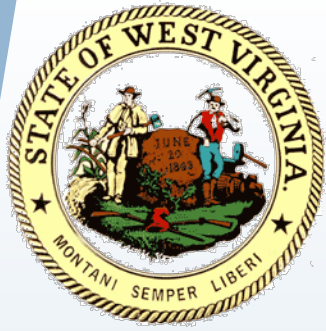




# Topics of Open Meetings Act

- Meetings subject to OMA
- Meetings not subject to OMA
- Notice/Agenda for meetings
- Executive sessions
- Meeting minutes
- Violations





# Open Meetings Act

- State, county, and municipal administrative and legislative bodies, and any bodies that meet the definition of 'public agency,' are subject to the Act.



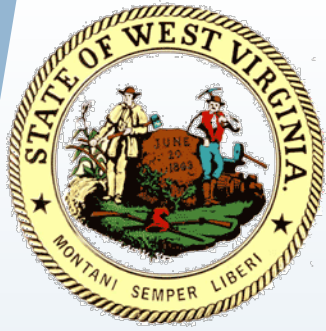


# Meeting defined

*A meeting subject to OMA is defined by the Act as:*

- The convening of a governing body of a public agency
- For which a quorum is required in order to make, or deliberate toward, a decision
- On a matter which results or will result in official action.

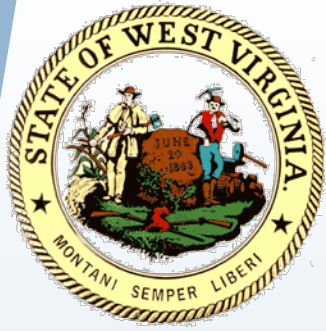




# Exceptions

- Adjudicatory
- On-site inspection
  - Construction site
- Political party caucus





# Exceptions

- General Discussions
- Planned or unplanned
- Social, educational, training, informal, ceremonial or similar setting
- Without intent to conduct public business
- No intention for the discussion to lead to an official action

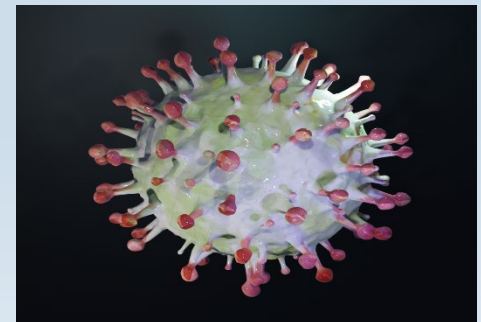




# Coronavirus

Don't need to meet in person if deemed a health risk by the CDC or other government agency authorized to make these types of decisions.

The public agency may instead provide citizens with a call-in number for a telephonic meeting or provide access via web link to a livestream of the meeting.





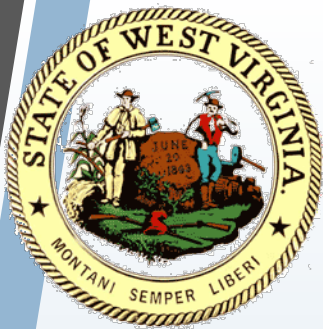


# Notice

Please Notice This



The **Open Meetings Act** requires advance notice of the date, time, and place of the meeting, including any committee meeting.



# Meeting Notice

- Promulgate Rules
- Regular meeting' notice must be posted THREE business days in advance (unless you meet every week, then two days).
- 'Special meeting' notice must be posted TWO business days in advance.
- But – state agency = FIVE business days notice w SOS.



# Notice: Ethics Commission website

## Meeting Information

Meetings of the Ethics Commission are scheduled for 10 a.m. on these dates:

December 6, 2018  
January 3, 2019  
February 7, 2019  
March 7, 2019  
April 4, 2019  
May 2, 2019  
June 6, 2019  
July 11, 2019  
August 1, 2019  
September 5, 2019  
October 3, 2019  
November 7, 2019  
December 5, 2019

Agendas are posted in the Ethics Commission's offices and on this website on the Friday prior to the scheduled meeting. Meeting minutes are posted on this website after they have been approved by the Ethics Commission.

## Location of meetings

All meetings are held in the Third Floor Conference Room at 210 Brooks Street in Charleston.

## Ethics Commission

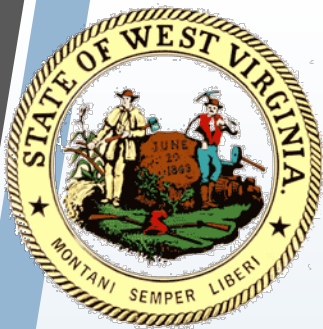
The nine-member Ethics Commission meets monthly to issue Advisory Opinions, Contract Exemptions and Employment Exemptions; to consider proposed Conciliation Agreements and to address other matters.

## Open Meetings Committee

The Ethics Commission's Committee on Open Governmental Meetings is comprised of three members of the Ethics Commission. The Committee meets as needed to issue Advisory Opinions which interpret the Open Governmental Meetings Act.

## ALJ Committee

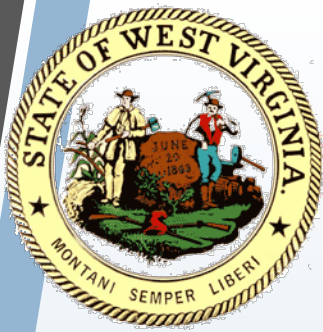
The Ethics Commission's Committee on Standards of Conduct for State Administrative Law Judges meets as needed to issue Advisory Opinions regarding the Code of Conduct for Administrative Law Judges. The Committee, comprised of three members of the Ethics Commission, also processes Verified Complaints filed against state Administrative Law Judges.



# Agenda

- Regular meeting agenda must be made available **THREE** business days in advance (unless you meet every week, then two days).
- Special meeting – **TWO** business days





# Emergency Meeting

W. Va. Code § 6-9A-2-(2)

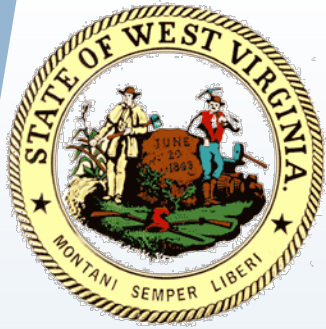
(2) "Emergency meeting" means any meeting called by a governing body for the purpose of addressing an **unexpected event** which requires **immediate attention** because it poses:

(A) An imminent threat to public health or safety;

(B) An imminent threat of damage to public or private property; or

(C) An imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves.



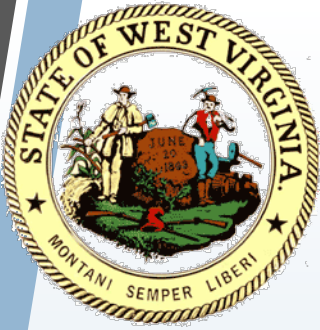


# Meeting Agenda

- Agendas must give reasonable notice to the public of every issue to be discussed. Don't take up issues not on the agenda. Hold them over for next agenda.
- Items must be specific enough to put the public on notice of intended action.
- Vague headings are insufficient, *e.g.*,
  - Old Business
  - New Business

OMAO 2008-17





# Meeting Agenda

“Personnel” and “Opening sealed bids” are too vague a description

*Instead, use “filling position of office manager,” or  
“open sealed bids for city hall roof repair project.”*

OMAO 99-10: Marshall Co BOE Employee grievance: “Level III grievance” is sufficient.

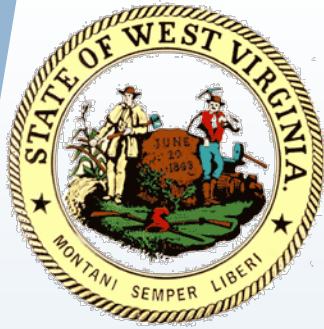




# Executive Session

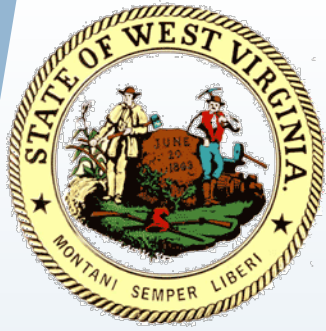
W.Va. Code § 6-9A-4

- May only go into executive session for reasons permitted by the Open Meetings Act.
- There must be a corresponding agenda item.
- The motion to go into executive session must identify the reason for entering the session.
- Majority vote of those present is required.
- Vote must be made in public (except for student matters).



# Executive Session reasons include -

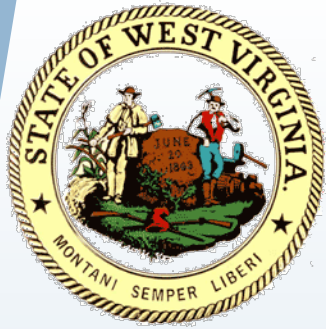
- To consider personnel matters of a particular public official or employee. But must vote in public and announce employee's name. OMAO 99-10
- To decide upon disciplining, suspension, or expulsion of any student in any public school, unless the student requests an open meeting.
- To discuss matters which, by express provision of federal law or state statute or rule of court is rendered confidential. OMAO 2017-02.
- W. Va. Code § 6-9A-4 (contains complete list)



# Executive Session

## **Open Meetings Advisory Opinion 2022-01**

The Open Meetings Act does not make information discussed during executive sessions confidential; nor does it create an excessive session privilege. Other rules and laws may create a duty of confidentiality.

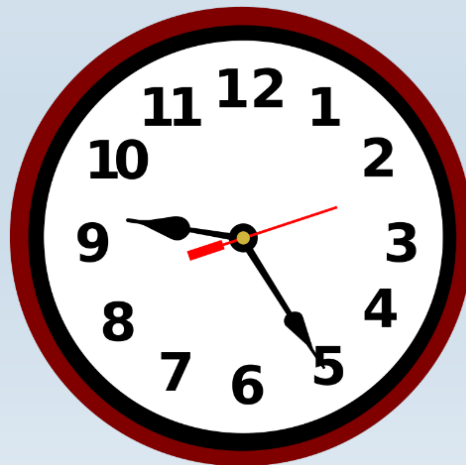


# Meeting Minutes

W.Va. Code § 6-9A-5

Minutes required for all meetings, including committee and subcommittee meetings, but not executive sessions.

- OMAO 99-09



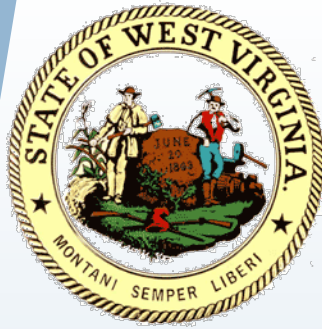


# Minutes



- The date, time and place of the meeting;
- The name of each member of the governing body present and absent;
- All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition, and
- The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member by name.





# Sample Minutes

## **Minutes of the June 1, 2017 Meeting of the West Virginia Ethics Commission's Open Governmental Meetings Committee**

The June 1, 2017, meeting of the West Virginia Ethics Commission's Open Governmental Meetings Committee was called to order in the Commission's Office at 210 Brooks Street, Charleston, West Virginia, at 9:30 a.m., by Chairperson Lawrence Tweel. Present in person were Chairperson Tweel and Committee Member Betty S. Ireland. Present via teleconference were Committee Member Suzan Singleton and Ex Officio Committee Member Robert J. Wolfe. Executive Director Rebecca L. Stepto, General Counsel Kimberly B. Weber, Staff Attorney Andrew Herrick, Staff Attorney Derek A. Knopp, and Special Assistant to the Executive Director M. Ellen Briggs, all from the Commission staff, were present.

WHEREUPON, Chairperson Tweel asked for approval of the November 3, 2017 meeting minutes.

WHEREUPON, Committee Member Ireland made a motion to approve the minutes. Committee Member Singleton gave a second. The motion passed.

WHEREUPON, Chairperson Tweel called upon Mr. Knopp to present Open Governmental Meetings Advisory Opinion 2017-01 for consideration.

WHEREUPON, Mr. Knopp presented proposed Open Governmental Meetings Advisory Opinion 2017-01 to the Committee for consideration. After discussion, a motion was made by Committee Member Ireland to accept the proposed Open Governmental Meetings Advisory Opinion 2017-01 as amended. Committee Member Singleton gave a second, and the motion passed unanimously.

WHEREUPON, Chairperson Tweel stated there were no more items for discussion. Committee Member Ireland moved that the meeting be adjourned, and Committee Member Singleton seconded. The motion carried, and the meeting was adjourned.

The foregoing minutes of the West Virginia Ethics Commission's Open Governmental Meetings Committee were approved at a regular meeting of the Committee on August 3, 2017.

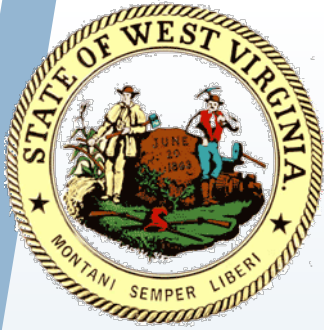
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Lawrence Tweel, Chairperson  
Open Governmental Meetings Committee  
West Virginia Ethics Commission

ATTEST:

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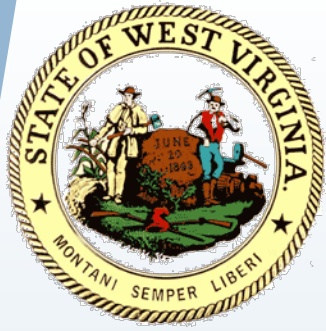
M. Ellen Briggs, Special Assistant  
to the Executive Director  
Open Governmental Meetings Committee  
West Virginia Ethics Commission



# Minutes

W.Va. Code § 6-9A-5

- Meeting minutes must be made available within a 'reasonable time.'
- 'Reasonable time' defined by OMAO 2010-04 as 'close of business on the next **business day** following [the next meeting].'
- If material changes to the minutes are necessary, then the minutes should be available no later than three business days following the next meeting.
- Draft minutes are encouraged, but not required, to be made available for public inspection.



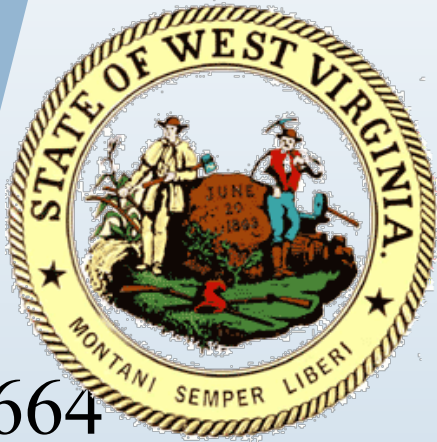
# Violations

W.Va. Code §§ 6-9A-6 and 7

- An intentional violation is a criminal misdemeanor subject to prosecution by the county prosecutor and up to a \$500 fine. (\$1,000 for additional violations)
- May also be liable to wronged parties in civil court. (within 120 days of action)
- Court may annul vote taken in violation of Act.



# West Virginia Ethics Commission



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