The Nuts and Bolts of Governmental Ethics
and Open Meeting Laws

WEST VIRGINIA
ETHICS COMMISSION
THE ETHICS ACT

• Applies to public servants in state, county & municipal government
• Applies to executive, legislative & judicial branches
• Applies to elected and appointed officials, full & part-time employees
• Does not apply to contractors or private organizations receiving government funds
GOVERNMENTAL ETHICS
- General Principles-

• Maintain confidence in integrity and impartiality of the governmental process

• Public employees should avoid conflicts between their personal interests and their public responsibilities
PROHIBITED INTERESTS IN PUBLIC CONTRACTS


• Certain county officials may not have a financial interest in any amount in a public contract over which their public position gives them voice, influence or control.

• Ethics Commission has authority to grant hardship waivers.
USE OF OFFICE FOR PRIVATE GAIN

• May not use public resources to conduct personal or private business

• More than a *de minimis* use of public resources violates the Act
NEPOTISM

• The **Private Gain Rule** governs the hiring of immediate family members. Ethics Commission has guidelines.

• General rule – independent third party should make decision.

• But, stricter limitations for County Officials

• W.Va. Code § 61-10-15
EMPLOYMENT - NEPOTISM


• Prohibits employment of County Official’s dependent family members (spouse or dependent children).

• Includes those who cohabit
  – AO 2012-11

• Exceptions –
  – County Commission spouse – may work at county hospital
  – County elected official and employee get married while working together
VOTING

• May not vote on the employment of a relative
VOTING

• “Relative” includes husband, wife, son, daughter, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, grandmother, grandfather, & grandchild
• May not vote to award contract to a business with which you or an immediate family member is associated
VOTING

• “Immediate family member” includes spouse with whom you are living, dependent children, dependent parents and dependent grandchildren
• Disclose Interest

• Leave Room – discussion and vote

• Minutes reflect
GIFT LIMITATIONS

• The Ethics Act prohibits public servants from accepting gifts from interested persons, under certain circumstances.
WHO IS AN INTERESTED PERSON?

One who:

• Seeks or does business with the public servant’s agency;

• Is engaged in activities regulated or controlled by the agency; or,

• Has financial interests which may be substantially & materially affected, in a manner distinguishable from the public generally, by the performance or non performance of official duties.
GIFT LIMITATIONS

• General rule – may not accept gift from an interested party in excess of $25/year

• No $ $ limit on food and beverages if host is present

• Public agencies may adopt stricter limits
Ziggy knows.......
Public Employee Recognition Guideline

• Permissible to use public funds to recognize public employees if it serves a public purpose of promoting employee morale through recognition of achievement

• Responsibility for deciding whether it is an appropriate use of public funds lies with the head of the State Agency or the appointed board to whom the head of Agency reports.
Public Employee Recognition Guideline

• May be used to purchase:
  » Light refreshments
  » Meals
  » Mementos of appreciation

• May spend up to $25 per employee per fiscal year

  Example: If 10 employees, then may spend $250 in public funds

• May be allocated between employee recognition events

• May spend up to $100 on one employee and less than $25 on others
Retirement Gifts & Events Guideline

- Applies to public servants who are retiring from public service, transferring to another public agency, resigning to return to private sector or completing their last term of office.

- **General Rule**: May spend up to $100 of public funds to purchase plaque or other commemorative item.

- May **not** give money (or gift card) as gift.
Retirement Gifts & Events Guideline

• Absent specific legislative authority, may **not** spend public funds to pay for meals, food, or beverages at an event recognizing a departing public servant
  • Any meals, food or beverages must be purchased using private funds collected in accordance with guideline

• May **not** use public funds to underwrite any rental or related fees associated with event held at an off-site location
Door Prizes, Gifts & Giveaways At Conferences

• A public agency may **not** use public funds to purchase door prizes, gifts, or giveaways.

• A public agency **may** use a reasonable amount of public funds to purchase:
  – items such as tote bags, pens, pencils or sticky notes to provide to conference attendees; and
  – incentives items to encourage audience participation

• Fair market value of all such items provided to each participant may not exceed $25
Door Prizes, Gifts & Giveaways At Conferences

PUBLIC SERVANTS

• May only accept items valued at $25 or less

• Prizes valued above $25 must be:
  – Returned,
  – Donated to charity, or
  – Donated to the agency.

• $25 limit applies to all gifts from a single source in a calendar year.
Door Prizes, Gifts & Giveaways At Conferences

• Attendees may bring gifts to conferences planned by public servants if:
  – You make it clear that participation is voluntary;
  – You inform the attendees that they must use **personal**, not **public**, funds;
  – You and/or the conference participants/public servants may **not** solicit anyone, including local businesses or persons for any gifts; and,
  – Fair market value of a gift may not exceed $25.
Door Prizes, Gifts & Giveaways At Conferences

VENDORS

– You may ask vendors or conference sponsors to donate items of nominal value (usually with a company logo) so long as they derive some commercial value from it.

– You and/or the conference participants/public servants may not solicit any gift or door prize from a vendor or conference sponsor; and,

– Fair market value of any item may not exceed $25.
FUNDRAISING FOR CHARITY

- Gifts may only be solicited for a charitable purpose, such as United Way
- May not solicit any contributions from a subordinate
SELLING AND BUYING FROM PERSONS YOU REGULATE

W. Va. Code § 6B-2-5(h)

• Full-time public servants - may not seek employment with or seek to purchase or sell or lease real or personal property from any person who:

  (1) Had a matter on which you or a subordinate took regulatory action within the last 12 months;

  (2) Currently has a matter before your agency on which you or a subordinate is working.

• May apply for an exemption.
Consider the Following Scenarios....

• From actual requests for advisory opinions and/or complaints........

• What advice would you give the requester?
• How would you rule on the complaint?
What do you think?

• May a vendor pay a City Manager’s registration fee (>-$25) for a golf tournament at an annual conference of government officials?

• The Manager has a good relationship with the vendor, and the offer represents a gesture of good will.
What do you think?

- May a state regulatory agency spend public funds for meals during agency meetings:
  - for board members?
  - for staff?

Advisory Opinion 2012-27
What do you think?

• May a state agency accept a regulated resort’s offer of a reduced lodging rate to its employees while they are at the site on government business?

• Agency must pay for employees’ lodging expenses if the work requires an overnight stay.

Advisory Opinion 2009-09
What do you think?

• May a State Legislator accept a prize of two round-trip airplane tickets that he won at a reception?

• The entity that provided the prize is a public entity.

• Although the reception was open to the public, the Legislator attended in his official capacity.

Advisory Opinion 2010-11
THE OPEN MEETINGS ACT

• Applies to governing bodies of public agencies
• Includes County Commission, Public Service District, City Councils, Regional Commissions, etc.
• Same rules apply to Committees and other sub-units of governing body
NOTICE AND AGENDA

Open Meetings Act Requires

• advance notice of the date, time, and place of the meeting

• an agenda of matters to be considered.
MEETING NOTICE

• Provide reasonable notice:
  • Regular Meetings
    – follow established schedule; OR
    – provide 3 business days notice
  • Special Meetings
    – provide 2 business days notice
MEETING AGENDA

• Regular meeting - 3 business days in advance
• Special Meeting – 2 business days in advance

• Do not count the day of the meeting, weekends or legal holidays

• Post in public place by close of business on day # 1
MEETING AGENDA

• List all items requiring official action on the agenda

• Official action involves anything requiring a vote of the governing body
  • Either at this meeting or a future meeting

• Be specific – no generic headings, e.g. personnel
MEETING AGENDA

• Agendas need not be published – only made available

• Including agenda on website recommended

• Posting in a public place meets the minimum requirements
AMENDING AN AGENDA

• Agenda may be amended up to two (2) business days before the meeting, except for a true emergency.

• Amended Agenda must be made available to the public and media in the same manner as the original agenda.
MEETING PROCEDURES

• Members may participate by telephone
• Members participating by telephone must be able to hear what is said by the members who are physically present
• Public present at meeting must be able to hear what is said over the phone
MEETING PROCEDURES

• May not vote by secret or written ballot

• Voting must take place by verbal statement or show of hands

• No proxy voting allowed
EXECUTIVE SESSION

• May only go into executive session for reason permitted by Act

• May only go into executive session if the subject of the discussion is on the Agenda

• Must have motion to go into executive session identifying exemption

• Majority vote required to convene in executive session
EXECUTIVE SESSION

• Personnel – most common exemption

• Hiring, firing, promoting, transfer, discipline or compensation of a specific employee

• If the subject employee requests an open session, the governing body may not conduct the discussion in executive session
EXECUTIVE SESSION

• General personnel matters are not exempt and must be discussed in open meeting
  – Examples: Across-the-board pay raise; supplemental insurance; creating new positions
• May not enter executive session to discuss agenda item “A” and then discuss agenda item “J” or an issue that is not on the agenda
• May not vote in executive session
EXECUTIVE SESSION

• Be wary of conducting more business than necessary in executive session

• Public perception of meeting “behind closed doors”
• Public comment periods are recommended, but not mandatory

• May not require speaker to sign up more than 15 minutes in advance
Robert’s Rules of Order

• Does not trump, supersede or replace the OMA
  • It is a supplement to the Open Meetings Act
  • O.M.A.O. 2010-02

• Robert’s Rules of Order provides guidance on parliamentary procedure during a meeting
  • It is not State law

• The OMA is a State law that mandates government entities to perform certain conduct before, during and after a meeting.
MEETING MINUTES

• Minutes required for all meetings

• State which members of governing body were present and any who were absent

• Must identify who made each motion

• Show the outcome of each vote on all motions, proposals, resolutions, orders, ordinances and measures
VIOLATIONS

● Intentional violations are a criminal misdemeanor subject to prosecution by the County Prosecutor
What are the answers to the following OMA questions?
Board members make a number of phone calls among themselves trying to agree on whether to introduce legislation on a particular issue.

Is this okay?
At each meeting, the County Commission allows time for public comment. During the public comment period, a citizen suggests that the Commission adopt a new policy. The Commission likes the idea and votes to adopt the policy.

Is this okay?
All members of the County Commission interview a candidate for County Manager.

Should they notice the meeting?
WV ETHICS COMMISSION

• Any questions?
The Singing Ethicist