



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Ethics Commission TITLE-SERIES: 158-06
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Use of Office for Private Gain, Including Nepotism
CITE STATUTORY AUTHORITY: W. Va. Code § 6B-2-5(b) and W. Va. Code § 6B-2-2(a)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB 4114

Section 64-2-1 Passed On 2/18/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 15, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Theresa M Kirk -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

158CSR6

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 6
USE OF OFFICE FOR PRIVATE GAIN, INCLUDING NEPOTISM

§ 158-6-1. General Provisions.

1.1. Scope. -- This legislative rule establishes requirements relating to the private gain provisions, including nepotism, in the Ethics Act.

1.2. Authority. -- W. Va. Code § 6B-2-5(b) and W. Va. Code § 6B-2-2(a).

1.3. Filing Date. -- March 31, 2022.

1.4. Effective Date. -- May 15, 2022.

1.5. Sunset Provision: This rule shall terminate and have no further force or effect on August 1, 2027.

§ 158-6-2. Exceptions to Using Office for Private Gain.

2.1. The following acts performed by a public official or public employee do not constitute an improper use of office for private gain:

2.1.1. Usual and customary duties associated with the office or position,

2.1.2. Services relating to the advancement of public policy goals, and

2.1.3. Constituent services without compensation.

2.2. A public official acting in his or her capacity as a public official may request information on behalf of a constituent provided that no fee, reward, or other thing of value is directly or indirectly accepted by the public official. The provisions of this subsection do not apply to a public official acting in his or her private capacity.

2.3. A public official or public employee may travel out-of-state to attend seminars or to inspect certain facilities or products on behalf of his or her public agency, provided that such activities are among the public official's or public employee's job responsibilities and there is a legitimate government reason for the travel. Such travel constitutes usual and customary duties associated with the office or position.

§ 158-6-3. Nepotism.

3.1. As used in this section, the term "nepotism" means favoritism shown or patronage granted in employment or working conditions by a public official or public employee to a relative or person with whom the public official or public employee resides.

3.2. As used in this section, the term "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.

3.3. As used in this section, the term "supervise" or "supervision" means reviewing, auditing or evaluating work, or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline, or related matters.

3.4. Nepotism constitutes improper use of office for private gain.

3.5. A public official or employee may not influence or attempt to influence the employment or working conditions of his or her relative or a person with whom he or she resides.

3.6. A public agency, including its officials and employees, must administer the employment and working conditions of a relative of a public employee or a public official or a person with whom the public official or employee resides in an impartial manner.

3.6.1. A public official or public employee may not participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides unless required by law and an independent third party is involved in the process.

3.6.2. A public official or public employee may not directly supervise a relative or a person with whom he or she resides. This prohibition does not extend to matters affecting a class of five or more similarly situated employees.

3.6.3. A public official or public employee may not use a subordinate as an independent third party required by subdivision 3.6.1 of this section. This prohibition does not apply to an elected public official who may not lawfully delegate powers of his or her office (for example, a sheriff, county assessor, or county clerk).

3.7. A public official may not vote on matters affecting the employment or working conditions of a relative or person with whom the public official resides unless such relative or person is a member of a class of five or more similarly situated persons affected. For a public official's recusal to be effective, he or she must excuse himself or herself from participating in the discussion and decision-making process by physically removing himself or herself from the room during the period in which the matter is under consideration, fully disclosing his or her interests, and recusing himself or herself from voting on the issue.

3.8. Certain county public officials and local board of education officials and employees are subject to the stricter limitations in W. Va. Code § 61-10-15. Other provisions in the Code or a public agency's own policies, rules, regulations, ordinances, or charters may further limit or prohibit the hiring of a relative or a person with whom a public official or employee resides.

§ 158-6-4. Use Subordinate for Private Gain.

4.1. Public officials and public employees may not use subordinate employees for their private gain or that of another person as an implied or express condition to their continued employment. For example, a public official may not require a subordinate employee to perform personal errands for the official to maintain his or her public employment.

4.2. Public officials and public employees may not use subordinate employees during work hours to perform private work or provide personal services for their benefit or that of another person. For example, a public official or public employee may not require his or her subordinate employee to repair a garage or pave a driveway for the public official or public employee during work hours. This prohibition does not apply to de minimis work or services.

§ 158-6-5. Use or Removal of Government Property.

5.1. Public officials and public employees may not remove government property from the workplace for their private benefit or that of another person.

5.2. Public officials and public employees may not use government property for personal projects or activities that result in private gain.

5.3. This section does not apply to the de minimis use of government property.

§ 158-6-6. Kickbacks.

A public official or public employee may not accept money or a thing of value from any person for providing business or other benefits to that person through the public official's or public employee's governmental agency or as a result of his or her influence and control.

§ 158-6-7. Bribes.

A public official or public employee may not receive money or a thing of value from any person for the purpose of influencing or persuading the official to perform his duties in a manner to benefit the person.

§ 158-6-8. Private Work During Public Work Hours.

Appointed public officials and part-time and full-time public employees may not receive private compensation for performing private work during public work hours. This section does not apply to de minimis private work.

§ 158-6-9. Exemption Categories.

Certain public officials or public employees bring to their respective offices or employment their own personal prestige, 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. These public officials and employees may apply to the Ethics Commission for an exemption from the limitations in W. Va. Code § 6B-2-5(b). The Ethics Commission

may grant an exemption if it finds:

9.1. 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;

9.2. The office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige, and

9.3. 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.

§ 158-6-10. Other limitations.

The Ethics Act sets a minimum standard of conduct. When the Legislature or a public agency imposes stricter standards, then public officials and public employees must comply with the stricter standards.