

Lewis D. Brown
Executive Director

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

FILED

NOV 26 PM 3:15

SERIES 11
EMPLOYMENT EXEMPTIONS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 158-11-1. General.

1.1. Scope. -- These legislative rules establish the guidelines which govern employment exemptions concerning employment for persons covered by the WV Governmental Ethics Act for full-time public officials and public employees.

1.2. Authority. -- W. Va. Code §6B-2-5(h)

1.3. Filing Date. -- ~~April 29, 1992~~

1.4. Effective Date. -- ~~June 1, 1992~~

§ 158-11-2. ~~General Prohibitions. Definitions.~~

~~2.1.a. For the purpose of this section "employment" does not include activities of employees and officials for or on behalf of charitable or not for profit public service entities from which they derive no pecuniary benefit.~~

~~b. Full-time public employees and officials may not seek employment with or be employed by a person that is or may be regulated by the governmental agency with which they are employed. This prohibition applies only to those employees who exercise policymaking, nonministerial or regulatory authority.~~

~~c. The prohibition exists only so long as an employee or official is employed by the regulating agency. Such a person is relieved from the prohibition immediately upon terminating his or her employment with the regulating agency. There is no waiting period.~~

~~2.2. No regulated person shall offer employment to a full-time employee or official of the regulating agency during their employment with the agency.~~

2.1. "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited

partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

2.2. "Public employee" means any full-time or part-time employee of any state, county or municipal governmental body or any political subdivision thereof, including county school boards.

2.3. "Public official" means any person who is elected or appointed to any state, county or municipal office or position and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

2.4. "Offer employment". Any contact by a person with a full-time employee or official of a regulating governmental agency, directly or through an intermediary, relating to employment constitutes "offering employment".

2.5. "Seek employment". Any contact with a person, directly or through an intermediary, relating to the availability or conditions of employment in furtherance of obtaining employment. Responding to unsolicited inquiries from a person concerning employment also constitutes seeking employment.

~~§158-11-3. Definitions. Limitations on Seeking Employment.~~

~~3.1. "Seek employment". Any contact with a regulated person, directly or through an intermediary, relating to the availability or conditions of employment in furtherance of obtaining employment. Responding to unsolicited inquiries from a regulated person concerning employment also constitutes seeking employment.~~

~~3.2. "Offer employment". Any contact by a regulated person with a full-time employee or official of a regulating governmental agency, directly or through an intermediary, relating to employment constitutes "offering employment".~~

~~3.3. "May be regulated". A person is one who "may be~~

~~regulated" upon a showing that the person's activities are of the nature and extent ordinarily regulated by the governmental agency.~~

3.1. Full-time public officials and employees who exercise authority over regulated persons or vendors may not seek employment with or be employed by a regulated person or vendor until and unless they seek and receive an exemption from the Ethics Commission.

3.2. A full-time public official or employee is considered to exercise authority over a regulated person for purposes of this rule if:

a. The person had a matter on which the full-time public official or employee took, or a subordinate is known to have taken regulatory action within the preceding twelve months; or,

b. The person has a matter before the agency on which the full-time public official or employee is working or a subordinate is known by the full-time public official or employee to be working.

3.3. A full-time public official or employee is considered to exercise control over vendors for purposes of this rule if he or she exercises authority or control over a public contract with a vendor, including but not limited to:

a. Drafting bid specifications or requests for proposals;

b. Recommending selection of the vendor;

c. Conducting inspections or investigations;

d. Approving the method or manner of payment to the vendor;

e. Providing legal or technical guidance on the formation, implementation or execution of the contract; or

f. Taking other nonministerial action which may affect the financial interests of the vendor.

3.2. For the purpose of this section "employment" does not include activities of employees and officials for or on behalf of charitable or not for profit public service entities from which they derive no pecuniary benefit.

3.3. The prohibitions on seeking employment, and the requirement that an exemption be obtained, apply only to employees or officials who are currently employed by a public agency, not those who have already terminated their employment with an agency.

3.4. Once a full-time public official or employee has either obtained an exemption or terminated his or her employment, then there is no waiting period for seeking employment; Provided, That public officials and employees are still subject to the limitations imposed by W.Va. Code § 6B-2-5(f) in regards to representing clients in matters in which they substantially participated as a public employee; Provided, Further, That elected or appointed public officials, full-time staff attorneys and full-time accountants must wait for one year before appearing back before their agency in accordance with W.Va. Code § 6B-2-5(g).

§ 158-11-4. Requests for Exemptions.

~~4.1. Persons requesting exemptions will be advised that exemptions are granted only upon condition that exempted persons not act or fail to take action in a matter affecting a person with whom they are seeking employment.~~

~~4.2. An application for exemption shall contain the following information:~~

~~a. the name, address and phone number of the governmental agency by which the applicant is employed~~

~~b. the applicant's job title and the name of his or her immediate supervisor~~

~~c. "facts" sufficient to support a finding that the prohibition for all practical purposes deprives the applicant of "the ability to earn a livelihood in this state outside of the governmental agency"~~

~~d. the names of any persons with whom the applicant intends to seek employment who have matters on which the requestor is currently taking official action~~

~~e. a copy of the applicant's job description~~

~~f. a copy of the applicant's resume, if he or she has one prepared.~~

~~4.3. When an exempted person sees that he or she may be required to take official action in regard to a matter affecting a person with whom he or she is seeking employment, he or she is responsible for notifying his or her supervisor of the exemption and seeking to be relieved from further action in regard to such person.~~

~~4.4. Once informed that a subordinate has received an exemption, it is the responsibility of the exempted person's supervisor to insure that:~~

~~a. the exempted subordinate takes no action in regard to persons with whom the exempted subordinate is seeking employment, or, if that is not possible,~~

~~b. the official action of the exempted subordinate is subject to additional review by the supervisor.~~

~~4.5. The power to grant exemptions pursuant to this rule is hereby delegated to the Commission Chairman and the Commission's Executive Director and either is authorized to grant such exemptions in the name of the Commission as provided by this rule.~~

~~4.6. Requests for exemptions will be decided within ten working days after being received by the Commission, unless additional information is required by the Commission, in which event the request will be decided within five working days after the Commission has received the necessary information.~~

~~4.7. Exemptions granted by the Commission Chairman and the Commission's Executive Director pursuant to this rule are for a period of thirty days. Within that thirty day period the exemption will be submitted to the Commission for ratification.~~

~~4.8. Persons granted exemptions by the Commission Chairman or the Commission's Executive Director will be notified of the Commission's decision on ratification within ten days of the decision.~~

~~4.9. Exemptions ratified by the Commission, or granted by it in the first instance, are subject to no time limit.~~

~~4.10. The Commission shall maintain a record of those persons granted exemptions and, where applicable, the names of those persons with whom they seek employment and in regard to whom they have been required by their supervisors to take official action. These records are public records and are~~

~~available for public examination and copying.~~

4.1. Full-time public officials or employees who are seeking an exemption shall submit a written request to the Executive Director of the WV Ethics Commission. The exemption request shall contain:

a. the name, address and phone number of the governmental agency by which the applicant is employed.

b. the applicant's job title and the name of his or her immediate supervisor.

c. facts sufficient to support a finding that the full-time public official or public employee would be adversely affected if he or she is prohibited from seeking employment with regulated persons or vendors over whom he or she exercises control.

4.2. The power to grant a temporary 30 day exemption pursuant to this rule is hereby delegated to the Commission Chair, or at the Chair's direction, the Commission's Executive Director. Either is authorized to grant an exemption in the name of the Commission as provided by this rule. The Executive Director or Chair shall grant or deny the exemption within 10 business days of receipt of the request. The Ethics Commission shall consider whether to ratify the decision within 45 days of receipt of the exemption request.

4.3. An exemption may only be granted if the Commission Chair or Executive Director finds that the full-time public official or employee will be adversely affected if the same is denied.

~~4.4. The Commission Chair or Executive Director shall report to the Ethics Commission the name and job title of any employees who have requested and received an exemption.~~

4.4. If a request for an exemption is denied, the full-time public official or employee may appeal the determination to the members of the Ethics Commission within 10 business days of the receipt of the denial of the request for an exemption.

a. The Ethics Commission shall consider the exemption request de novo.

b. A ruling on an appeal shall be made by the Ethics Commission within 45 days of receipt of the request for an appeal from the decision of the Executive Director or Chair

denying the exemption request.

§ 158-11-5. Purpose and terms of exemptions.

5.1. The Commission finds that the overriding purpose of seeking and obtaining an exemption is to ensure transparency in the governmental process and to ensure that the public official or employee ceases and desists from taking action in regards to persons over whom the public official or employee exercises regulatory authority or purchasing power and with whom they are seeking employment. To fulfill the purpose of transparency and fairness, and in accordance with the Ethics Act, the following restrictions are hereby imposed:

a. Once a temporary or permanent exemption is granted, the public official or employee shall provide a copy of the exemption to his or her supervisor within 2 business days of receiving the exemption.

b. The public official or employee may take no official action in regards to a person or persons with whom they are seeking employment, unless it would create an undue hardship on the agency to prohibit him or her from carrying out his or her public job responsibilities. If this limitation will impose an undue hardship, then the affected public official or employee may take action when authorized by their employing agency's executive director or governing body. These actions shall be subject to additional review by a supervisor or the governing body.

5.2. Exemptions granted by the Commission are subject to a one year time limit. At the expiration of the one year time limit, the full-time public official or employee must submit a new request if he or she intends to seek employment with a regulated person or vendor.

5.3. The Commission shall maintain a record of those full-time public officials or employees who are granted exemptions. These records are public records and are available for public examination and copying.