

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Kim Kunk 6-24-2010

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 6-9-2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No) West Virginia Ethics Commission, 210 Brooks Street
Suite 300, Charleston, WV 25301

LEGISLATIVE RULE TITLE: Forms, Title 158, Series 20

1. Authorizing statute(s) citation W Va Code §§ 6B-2-2(a), 6B-2A-1 and 6B-3-2

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

April 14, 2010

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:

May 14, 2010

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x

No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

6/24/2010

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Theresa M. Kirk
Executive Director
210 Brooks Street, Suite 300
Charleston, WV 25301
(304) 558-0664 - Phone
(304) 558-2169 - Facsimile
theresa.m.kirk@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 20, Forms

The Ethics Act requires that public servants and lobbyists file various forms with the Ethics Commission. An overview of the types of forms include: (1) lobbyist registration statements; (2) lobbyist expenditure reports; and, (3) financial disclosure statements. West Virginia Code § 6B-2A-1 states that the Commission shall prepare these forms in a manner set forth in a Legislative Rule. As such, it appears that the Legislature contemplated that public servants, lobbyists, or both, should have a formal means of making recommended changes to forms.

Historically, the Commission has made revisions to its forms over the years in response to comments from filers and based upon its own attempt to seek to clarify and simplify the form. The proposed Rule is an attempt to formalize the Commission's practice in regard to preparing and modifying forms required to be filed with the Commission. It provides an informal means for public servants or lobbyists to make an oral or written request to the Commission's Executive Director. The Rule further provides that if the Executive Director or his or her designee declines to make the requested change, then the requester may seek a formal advisory opinion from the Commission. The proposed rule also incorporates a proposed Lobbyist Registration Statement that West Virginia Code § 6B-3-2(a) appears to require.

STATEMENT OF CIRCUMSTANCES
Title 158, Series 20, Forms

The Ethics Act contains various language relating to disclosure forms, statements and reports prepared by the West Virginia Ethics Act. Upon reviewing its enabling Legislation, the Commission determined that proposing a Legislative Rule appeared to be the most conservative means of complying with somewhat confusing language in the Ethics Act governing forms, to wit: W.Va. Code § 6B-2A-1(b) .

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Forms

Rule Title: _____

Type of Rule:

☒

Legislative

☐

Interpretive

☐

Procedural

Agency:

West Virginia Ethics Commission

Address:

210 Brooks Street

Suite 300

Charleston, WV 25301

Phone Number:

(304) 558-0664

Email: theresa.m.kirk@wv.gov**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

None.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Forms

Rule Title: _____

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

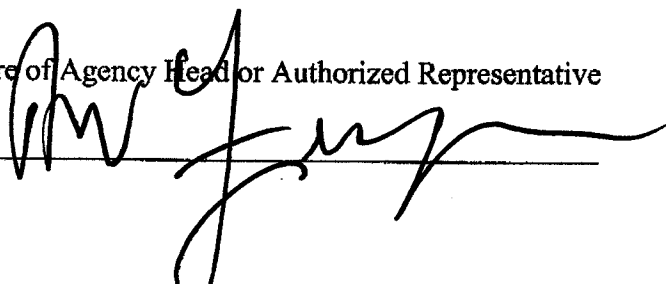
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Historically, the Commission has made revisions to its forms over the years in response to comments from filers and based upon its own attempt to seek to clarify and simplify the form. The proposed Rule is an attempt to formalize the Commission's practice in regard to preparing and modifying forms required to be filed with the Commission. It provides an informal means for public servants or lobbyists to make an oral or written request to the Commission's Executive Director. The Rule further provides that if the Executive Director or his or her designee declines to make the requested change, then the requester may seek a formal advisory opinion from the Commission.

No additional costs will be incurred by the Commission.

Date: 6-9-2010

Signature of Agency Head or Authorized Representative



**TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION**

FILED

2010 JUN 24 PM 1:24

**SERIES 20
Forms**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 158-20-1. General.

1.1. Scope. -- This legislative rule relates to forms created by the Ethics Commission for filings by public servants and lobbyists.

1.2. Authority. -- W. Va. Code §§ 6B-2-2(a), 6B-2A-1 and 6B-3-2.

1.3. Filing Date. --

1.4. Effective Date. --

§ 158-20-2. Definition.

Form shall mean any form, report or statement that W. Va. Code § 6B-1-1 *et seq.* requires the West Virginia Ethics Commission to prepare.

§ 158-20-3. General Rules.

3.1. A blank copy of any financial disclosure forms or lobbyist registration statements or expenditure reports required to be prepared by the Commission shall be made available for inspection and review upon the Commission's website and upon request.

3.2. Any person who is required to file a form in accordance with the requirements of the Ethics Act, W. Va. Code §§ 6B-1-1 *et seq.*, may request that the format of a form be modified.

3.3. A request that a form be modified may be made orally or in writing to the Executive Director of the Ethics Commission. The Executive Director or his or her designee shall reply to a request within the following time frames:

a. Oral requests - An oral response shall be provided within five business days of receipt of the request for modification.

b. Written request - A written response shall be provided within ten business days of receipt of the request for modification.

c. For purposes of calculating days, the day of the receipt of the request shall not be included or Saturdays, Sundays and legal holidays. A written response shall be considered timely if postmarked by the due date.

3.4. If the Executive Director or his or her designee declines to make the requested modification, the requester may submit a formal advisory opinion request to the Ethics Commission. Any such request

must comply with the requirements of W.Va. Code § 6B-2-3(a). The Ethics Commission shall rule upon the request within sixty days of receipt of the request. In calculating this period, the day of the receipt of the request shall not be included.

§ 158-20-4. Lobbyist Registration Forms.

4.1. Lobbyists shall register on a form which is the same as the form attached as Appendix A to this rule. If the Commission implements electronic registration, then the electronic form shall be substantially similar.

4.2. Lobbyists shall submit a written authorization from each of the their employers confirming the lobbyist's employment and the subjects on which the employer is to be represented on a form which is the same as the form attached as Appendix B to this rule. If the Commission implements electronic registration, then the electronic form shall be substantially similar.

Return this completed form
and all attachments to:
WV Ethics Commission
210 Brooks Street, Ste 300
Charleston WV 25301
Phone: 304 558-0664

Lobbyist Registration

West Virginia Lobbyist 20xx-20xx



This registration is valid through end of 20xx. Registration no. _____
(assigned by Ethics Commission)

(LRS-1)

Important filing requirements for the lobbyist

Payment to the WV Ethics Commission for \$100.00 for your base lobbyist registration fee. Paid by check ☐ or CCARD ☐
Recent passport-type photo, approximately 2 x2 to create a photo ID and to publish in the lobbyist directory. Attached ☐ or Electronic ☐
A separate Representation Form for each entity that you represent plus an additional fee of \$100.00 per entity.

☐ Mark here if this form amends earlier information supplied by you. Please indicate the changes or additions you wish to make to your registration or representation information. If you are terminating your registration or your representation for a client or clients, please attach a completed Termination Report to this form.

1. Lobbyist contact information (please print clearly)

Lobbyist name: _____ Phone: (____) _____
Email: _____ Fax: _____
Alternate Phone _____

Name to use on Lobbyist ID Badge: _____

Please provide complete address information. Check the box next to your preferred mailing address

☐ Business Address (required) _____ phone: _____

☐ Home Address: _____ phone: _____

Temporary or Legislative Session address (if different)

Business Address: _____ phone: _____

2. Representations*

List all employers or entities for which you are registering to lobby. A separate **Representation form** must accompany this form for each listed employer, organization or entity that you represent. You may add additional Statements of Representation any time after your initial registration. Each representation requires a fee of \$100.00

1. _____ 4. _____
2. _____ 5. _____
3. _____ 6. _____

* If you are not representing a particular employer or organization, provide a general description of the subjects, topics or issues which will be the focus of your lobbying efforts. _____

3. Persons employed by lobbyist to lobby (if any)

4. Lobbyist certification and signature

To the best of my knowledge, the information contained hereon and on any attached materials is true, correct and complete. I understand that it is a violation of WV Code 6B-3-9 to willfully and knowingly file a false or incomplete report. I further understand that any person who fails to comply with the lobbyist registration and reporting requirements of the Ethics Act may be subject to administrative prosecution by the Ethics Commission. For any questions or instructions for completing this form please contact the Ethics Commission or refer to the website www.wvethicscommission.org

Lobbyist Signature _____ Date _____

WV Ethics Commission
210 Brooks St., Suite 300
Charleston WV 25301
304-558-0664

Employer Representation / Authorization West Virginia Lobbyist 20xx-20xx



Important: This form is to be completed and signed by the Employer and the Lobbyist. It is valid through 20XX unless cancelled, changed or amended in writing before that time.

Note: All questions must be completed or the form will be returned.

Important information

A fee of \$100.00 and this completed Representation form is required for each entity that you represent as a lobbyist.

Paid by check ☐ credit card ☐ (This is in addition to the base lobbyist registration fee of \$100.00)

Is this your initial registration? A completed Lobbyist Registration (LRS-1) must accompany this form.

Is this an additional representation? An Amended Lobbyist Registration Statement must accompany this form.

1. Lobbyist name as listed on Lobbyist Registration form (form LRS-1)

Lobbyist name _____ Registration number (if known) _____

Email: _____ Phone: _____ Fax: _____

2. Represented Employer, Organization or Association

► Name _____
Complete name of represented **Employer, Organization or Association**

► Mailing address: _____
_____ phone: _____
_____ fax: _____

► Occupation or type of business: _____

► Provide a general description of the subjects, topics or issues which will be the focus of lobbying efforts

3. Lobbyist information for this employer/authorization

► Check only one: _____ Retained solely as lobbyist
_____ Unpaid volunteer
_____ Regular employee, services include but are not limited to lobbying

► Is the lobbyist employed or retained under any agreement, arrangement or understanding by which any compensation paid to the lobbyist is contingent upon the success of his or her lobbying activity?

Yes _____ No _____ Not applicable _____

► Lobbyist Signature: X _____ Date: _____

4. Employer certification

I certify that the lobbyist named above is authorized to lobby on our behalf, and that to the best of my knowledge, this Statement of Representation is true, correct and complete. For questions or to obtain instructions for completing this form, please contact the Ethics Commission or refer to the website www.wvethicscommission.org.

Authorized Signature: X _____ Date: _____

Type or print name: _____ Title: _____

Email address: _____

West Virginia Ethics Commission
Proposed Rule - Title 158, Series 20
Summary of comments and response thereto

(1) Lisa Dooley - Executive Director of West Virginia Municipal League -

Comment 1: Director Dooley states that the proposed rule should be revised to make it clear that the purpose of the rule is to require that blank forms, not completed forms, be made available for review on the Ethics Commission website.

Response: The Commission concurs with the recommendation. The purpose of the enabling Legislation, W.Va. Code § 6B-2A-1, is to provide public servants or lobbyists a formal means of requesting changes to the format of forms prepared by the Ethics Commission. Historically, the Commission has posted the blank forms on its website and has welcomed suggestions in regard to changes in format. The rule is intended to formalize this procedure.

The following changes, as indicated by strike-throughs and underscoring, were made in response.

§ 158-20-2. Definition.

Form shall mean any form, report or statement that W.Va. Code § 6B-1-1 *et seq.* requires ~~to be filed with~~ the WV Ethics Commission to prepare.

§ 158-20-3. General Rules.

3.1. A blank copy of any ~~Any~~ financial disclosure forms or lobbyist registration statements or expenditure reports required to be prepared by the Commission shall be made available for inspection and review upon the Commission's website and upon request.

3.2. Any person who is required to file a form in accordance with the requirements of the Ethics Act, W.Va. Code §§ 6B-1-1 *et seq.*, may request that the format of a form be modified.

Comment 2: Ms. Dooley states that, in her opinion, the lobbyist registration fee for associations should be \$100.00. At present, the total cost to register as a lobbyist on behalf of an association is \$200.00 which includes the \$100.00 registration fee for a person to individually register as a lobbyist and an additional \$100.00 fee for the person to register to lobby on behalf of an employer.

Response 2: In the opinion of the Ethics Commission, the plain language in the Ethics Act requires Ms. Dooley and similarly situated individuals, under the circumstances described, to

pay a total of \$200.00 to register as a lobbyist on behalf of their employer. *See* A.O. 2005-08 interprets the relevant code provisions including West Virginia Code § 6B-3-3a. This opinion is available for viewing at the Commission's website, www.wvethicscommission.org.

To change the filing fee would, in the opinion of the Ethics Commission, require statutory amendment. As such, the Commission declines to amend the Rule in response to this request. As a matter of note, the fees are deposited in the State's General Fund. Hence, the Commission derives no direct monetary benefit from the fees.

Comment 3: Ms. Dooley raises a concern about identity theft if the signed and completed lobbyist registration and reporting forms are posted on the Commission's website.

Response 3: It is the opinion of the Ethics Commission that, based upon existing law, the Commission has discretion in regard to what public information it elects to make available on its website. Further, it is the opinion of the Commission that if it elects to post lobbyist registration statements or expenditure reports, it is authorized to redact the filer's signature for the on-line posting if it believes that publishing the signature may increase the risk of identity theft to the filer.

It is further the opinion of the Ethics Commission that the rule, as written, does not restrict the Commission's discretion to redact the signatures under the circumstances described. As such, the Commission declines to make a change in response to this portion of the comment; however, the Commission will take the concern under consideration as the Commission continues its efforts to post additional information on its website.

(2) Patti Hamilton - Executive Director - West Virginia Association of Counties

Comment 1: Director Hamilton states that the proposed rule should be revised to make it clear that the purpose of the rule is to require that blank forms, not completed forms, be made available for review on the Ethics Commission website.

Response 1: The response of the Commission is the same as its response to Director Dooley's comment.

Comment 2: Ms. Hamilton states that in her opinion, the lobbyist registration fee for associations should be \$100.00. At present, the total cost for to register as a lobbyist on behalf of the association is \$200.00 which includes the \$100.00 registration fee for a person to register individually and an additional \$100.00 fee for the person to register to lobby on behalf of an employer.

Response 2: The response of the Commission is the same as its response to Director Dooley's comment.

(3) Technical Change

After the close of the public comment period, Amy Tolliver, registered lobbyist for the WV State Medical Association, emailed to seek clarification in regard to the time frames set forth in § 158-20-3.3. As the requested change was technical in nature, the following language was added.

3.3. A request that a form be modified may be made orally or in writing to the Executive Director of the Ethics Commission. The Executive Director or his or her designee shall reply to a request within the following time frames:

a. Oral requests - An oral response shall be provided within five business days of receipt of the request for modification.

b. Written request - A written response shall be provided within ten business days of receipt of the request for modification.



MAYOR SUSAN WEBSTER
President, Bath
MAYOR ROBERT NEWELL
Vice President, Parkersburg
MAYOR JIM CHRISTIE
Secretary, Bridgeport
MAYOR DICK CALLAWAY
Treasurer, St. Albans
MAYOR DANNY JONES
Immediate Past President, Charleston
MAYOR MARK HARRIS
Weirton
MAYOR JAMES LOBB
Kingwood
MAYOR L. PAUL INGRAM
St. Marys
MAYOR TONY PAESANO
Follansbee
MAYOR ANDY MCKENZIE
Wheeling
MAYOR MATTHEW DELLIGATTI
Fairmont
MAYOR DUKE TALBOTT
Elkins
MAYOR PEGGY SMITH
Charles Town
MAYOR FRANK MULLENS
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MAYOR LINDA WHALEN
Bluefield
MAYOR JAMES AKERS
Fayetteville
MAYOR MARGARET BAILEY
Clarksburg
MAYOR KIM WOLFE
Huntington
MAYOR MICHAEL MARTIN
Mt. Hope
MAYOR ANNA LOU HOLT
Oak Hill
MAYOR DEWEY RUSSELL
Princeton
MAYOR JOHN MANCHESTER
Lewisburg
MAYOR BILL BYRNE
Morgantown
MAYOR CHARLES ARMSTRONG
Glasgow
COUNCILOR ROBIN SMITH
Fairmont
COUNCILOR SANDRA CLEMENTS
Huntington
COUNCILOR ANN WORLEY
Beckley
COUNCILOR KATHY SANTORO
Follansbee
COUNCILOR MARY JEAN DAVIS
Charleston
COUNCILOR SHARYN TALLMAN
Parkersburg
CLERK SONDRA HEWITT
Moundsville
CLERK BARBARA CUNNINGHAM
St. Albans
CITY MANAGER ROBERT HERRON
Wheeling
CLERK SUZAN SINGLETON
Auditor, Glen Dale
Past Presidents
MAYOR JESSE CORLEY
White Hall
MAYOR TERRY WILLIAMS
Spencer
MAYOR EMMETT PUGH, III
Beckley
COUNCILOR JAMES HUNT
Clarksburg
MAYOR LYDIA MAIN
Masonstown
MAYOR DAVE HAMILL
Ranson
RECORDER NANCY SHOBE
Parliamentarian, Buckhannon
CLERK JANICE JONES
Chaplain, Wheeling
LISA DOOLEY
Executive Director

May 13, 2010

Ms. Theresa Kirk
WV Ethics Commission
210 Brooks Street
Charleston, WV 25301

Hand Delivered

RE: Title 158, Series 20, Forms

Dear Ms. Kirk,

Please thank Lucy for forwarding the proposed legislative rules for our review and accept this letter as my written comments to the proposal.

My only suggestion for changes would be to add the word blank after the word "Any" in 3.1 of the rule. I understand that you want to make the forms available online and accept comments for modifications; however, after review, I believe 3.1 of the rule could be interpreted to include the forms as completed- with signatures. With the high occurrence of identity theft across the internet, I do not want a copy of my signature on the www and strongly oppose the rule without this amendment.

As the Ethics Commission currently makes all information available in data sets on the website pertaining to lobbyists at <http://www.wvethicscommission.org/Lobbyforms/EMPLOYER%2004-16-2010.pdf>, <http://www.wvethicscommission.org/Lobbyforms/EMPLOY.pdf>, and <http://www.wvethicscommission.org/Lobbyforms/LOBBY%2004-16-2010.pdf>, the addition of signed and completed forms seems unnecessary and troublesome to me. Additionally, individuals who wish to see these can come to your office and view the completed forms in person. I don't see the necessity of allowing someone in California to view my signature when all the information is in a neat data set provided currently by your Commission.

Additionally, I would also like to see the registration fee reduced for Associations to include only the \$100.00 registration fee. Currently, Associations pay \$100.00 registration and \$100.00 for the Association. I can understand with professional lobbyists how you would want to collect for every client they represent; however, to make me, my bill tracker, and my professional lobbyist pay for the Municipal League, you are collecting three times for one employer. With the non-profits budgets tighter than I have seen in my career, especially those of us who represent local governments, I feel the \$100.00 registration fee is sufficient and the employer fee, if charged at all, should only be for professional lobbyists with multiple clients.

Thank you for accepting these comments and I look forward to hearing from you on this matter.

Sincerely yours,

Lisa Dooley
Executive Director

RECEIVED
WV ETHICS COMMISSION
2010 MAY 14 PM 3:03



2211 Washington Street East
Charleston, WV 25311-2118
Phone: (304) 346.0591
Fax: (304) 346.0592

Patricia L. Hamilton
Executive Director

May 13, 2010

Ms. Theresa Kirk
West Virginia Ethics Commission
210 Brooks Street
Charleston, West Virginia 25301

Re: Proposed Legislative Rules, Title 158, Series 20, Forms

Dear Ms. Kirk:

Thank you for the opportunity to comment on the proposed legislative rules. I have one concern with regard to 3.1 of the rule. It has been explained to me that the Ethics Commission contemplates only blank forms being made available so lobbyists can print them as needed from the web site. This is a logical and helpful service.

However, I first interpreted this to mean that our completed forms would be made available on the web site. Out of concern that others might interpret it that way as well and demand that our completed registration forms be available on the internet, I think there should be clarifying language such as "blank" forms or "forms to be completed."

On another issue, I have always felt that the registration fee for associations should be \$100. In fact, the first year the change to \$100 plus \$100 for each employer was in effect, I sent in only \$100 thinking that the amount *included* the first, and in my case, only employer. I used to register our attorney as a lobbyist in case I became ill during the session and he needed to fill in for me but I no longer do that because it would be an additional \$200 from the same employer. For those of us who are association directors, serving as a lobbyist during the session is one of many responsibilities and we work for only one employer. It is a different situation than that of a lobbyist who works for multiple organizations and whose sole reason for employment is to serve as a lobbyist.

Thank you for your consideration of my comments.

Sincerely,

Patti Hamilton, Executive Director
West Virginia Association of Counties

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WV ETHICS COMMISSION
2010 MAY 14 PM 1:28



STATE OF WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION
210 BROOKS STREET, SUITE 300
CHARLESTON, WEST VIRGINIA 25301-1804
(304) 558-0664 • FAX (304) 558-2169
ethics@wv.gov • www.wvethicscommission.org

COPY

June 24, 2010

Lisa Dooley
Executive Director
West Virginia Municipal League
2020 Kanawha Blvd. East
Charleston, WV 25311

RE: Response to the Public Comment submitted by the West Virginia Municipal League to Title 158, Series 20, Forms

Dear Director Dooley:

Thank you for submitting a public comment. The response of the Commission follows.

First, you state that you believe the proposed rule should be revised to make it clear that the purpose of the rule is to require that blank forms, not completed forms, be made available for review on the Ethics Commission website.

The Commission concurs with your recommendation. The purpose of the enabling Legislation, W.Va. Code § 6B-2A-1, is to provide public servants or lobbyists a formal means of requesting changes to the format of forms prepared by the Ethics Commission. Historically, the Commission has posted the blank forms on its website and has welcomed suggestions in regard to changes in format. The rule is intended to formalize this procedure.

As such, we believe that your suggested change will make the Rule clearer. The following changes, as indicated by strike-throughs and underscoring, will be made.

§ 158-20-2. Definition.

Form shall mean any form, report or statement that W.Va. Code § 6B-1-1 *et seq.* requires ~~to be filed with~~ the WV Ethics Commission to prepare.

§ 158-20-3. General Rules.

3.1. A blank copy of any Any financial disclosure forms or lobbyist registration statements or expenditure reports required to be prepared by the Commission

shall be made available for inspection and review upon the Commission's website and upon request.

3.2. Any person who is required to file a form in accordance with the requirements of the Ethics Act, W.Va. Code §§ 6B-1-1 *et seq.*, may request that the format of a form be modified.

Second, you state that, in your opinion, the lobbyist registration fee for associations should be \$100.00. At present, the total cost for you to register as a lobbyist on behalf of the association is \$200.00 which includes the \$100.00 registration fee for you to register individually and an additional \$100.00 fee for you to register to lobby on behalf of your employer, the WV Municipal League.

In our opinion, the plain language in the Ethics Act requires you and similarly situated individuals, under the circumstances described, to pay a total of \$200.00 to register as a lobbyist on behalf of the Association of Counties. See A.O. 2005-08, attached hereto, which interprets the relevant code provisions including West Virginia Code § 6B-3-3a.

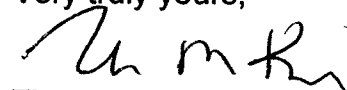
To change the filing fee would, in the opinion of the Ethics Commission, require statutory amendment. As such, the Commission declines to amend the Rule in response to this request. As a matter of note, the fees are deposited in the State's General Fund. Hence, the Commission derives no direct monetary benefit from the fees.

Last, you mention a concern about identity theft if the signed and completed lobbyist registration and reporting forms are posted on the Commission's website. It is the opinion of the Ethics Commission that based upon existing law, the Commission has discretion in regard to what public information it elects to make available on its website. Further, it is the opinion of the Commission that if it elects to post lobbyist registration statements or expenditure reports, it is authorized to redact the filer's signature for the on-line posting if it believes that publishing the signature may increase the risk of identity theft to the filer.

It is further the opinion of the Commission that the rule, as written, does not restrict the Commission's discretion to redact the signatures under the circumstances described. As such, we decline to make a change in response to this portion of the comment; however, we will take your concern under consideration as the Commission continues its efforts to post additional information on its website.

In closing, thank you for your constructive comments. If you have any questions, please feel free to contact me.

Very truly yours,



Theresa M. Kirk
Executive Director

ADVISORY OPINION NO. 2005-08

Issued On June 2, 2005 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Registered Lobbyist** seeks clarification of the registration fees required under the 2005 amendments to the Ethics Act.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a registered lobbyist with a business entity that represents several clients. He and another employee of the business ordinarily represent 8 to 10 clients during a registration cycle. The requester asks whether multiple employees of a lobbying firm are each required to pay an additional \$100 for every client they jointly represent.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

Senate Bill 1003, passed during the First Extraordinary Session of the Legislature on January 29, 2005, and Senate Bill 153, passed during the Regular Session of the Legislature on March 16, 2005, amended the West Virginia Governmental Ethics Act. These amendments become effective on July 1, 2005.

W. Va. Code § 6B-3-1, *Definitions*, provides in pertinent part as follows:

As used in this article, unless the context in which used clearly indicates otherwise:

(1) "Compensation" means money or any other thing of value received or to be received by a lobbyist from an employer for services rendered.

(2) "Employer" or "lobbyist's employer" means any person who employs or retains a lobbyist.

* * *

(6) "Lobbying" or "lobbying activity" means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

(ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

(7) "Lobbying firm" means any business entity, including an individual contract lobbyist, which meets either of the following criteria:

(A) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of lobbying on behalf of any other person, and any partner, owner, officer or employee of the business entity.

(B) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elected state official, agency official or legislative official for the purpose of lobbying on behalf of any other person.

(8)(A) "Lobbyist" means any individual employed by a lobbying firm or who is otherwise employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of promoting, advocating, opposing or otherwise attempting to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

(ii) The adoption or rejection of any rule, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

W. Va. Code § 6B-3-2(a) provides, in pertinent part:

Before engaging in any lobbying activity, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register with the Ethics Commission by filing a lobbyist registration statement. The registration statement shall contain . . . [a]n appended written authorization from each of the lobbyist's employers confirming the lobbyist's employment and the subjects on which the employer is to be represented.

W. Va. Code § 6B-3-3a, *Registration fees*, provides as follows:

(a) Each lobbyist shall, at the time he or she registers, pay the Commission a base

registration fee of one hundred dollars, plus one hundred dollars for each employer represented, to be filed with the initial registration statement and with each new registration statement filed by the lobbyist in subsequent odd numbered years. Whenever a lobbyist modifies his or her registration to add additional employers an additional registration fee of one hundred dollars for each additional employer represented shall be paid to the Commission.

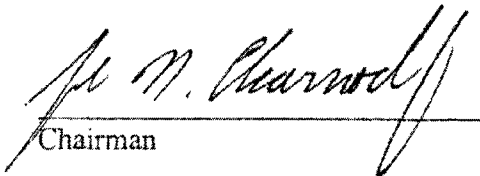
ADVISORY OPINION

Pursuant to W. Va. Code § 6B-3-2(a) each "lobbyist" as defined in W. Va. Code § 6B-3-1(8)(A) must register with the Ethics Commission before engaging in any lobbying activity or within thirty days after being employed as a lobbyist, whichever happens first. The definition of "lobbyist" specifically includes "any individual employed by a lobbying firm."

There is nothing in the definition of "lobbying firm" which suggests that those persons employed by a lobbying firm to engage in lobbying on behalf of various clients are not required to file a separate authorization from each client-employer they represent. In accordance with the plain language of the statute, the requester and each employee of his lobbying firm who are required by the Act to register as lobbyists are required to file a separate written authorization with the Commission from each employer they represent, and pay a \$100 fee for each form filed.

Persons who have properly registered as lobbyists for calendar years 2005-2006 prior to July 1, 2005, will be required to pay this additional \$100 fee in the event they commence representing an additional employer on or after July 1, 2005. Otherwise, these new fees will not be applicable until the lobbyist seeks to renew his registration for the 2007-2008 registration cycle.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by lobbyists and other persons unless and until it is amended or revoked.


Chairman



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COPY

June 24, 2010

Patti Hamilton
Executive Director
WV Association of Counties
2211 Washington Street East
Charleston, WV 25311

**RE: Response to the Public Comment submitted by the WV
Association of Counties to Title 158, Series 20, Forms**

Dear Director Hamilton:

Thank you for submitting a public comment. The response of the Commission follows.

First, you state that you believe the proposed rule should be revised to make it clear that the purpose of the rule is to require that blank forms, not completed forms, be made available for review on the Ethics Commission website.

The Commission concurs with your recommendation. The purpose of the enabling Legislation, W.Va. Code § 6B-2A-1, is to provide public servants or lobbyists a formal means of requesting changes to the format of forms prepared by the Ethics Commission. Historically, the Commission has posted the blank forms on its website and has welcomed suggestions in regard to changes in format. The rule is intended to formalize this procedure.

As such, we believe that your suggested change will make the Rule clearer. The following changes, as indicated by strike-throughs and underscoring, will be made.

§ 158-20-2. Definition.

Form shall mean any form, report or statement that W.Va. Code § 6B-1-1 *et seq.* requires ~~to be filed with~~ the WV Ethics Commission to prepare.

§ 158-20-3. General Rules.

3.1. A blank copy of any Any financial disclosure forms or lobbyist registration statements or expenditure reports required to be prepared by the Commission

shall be made available for inspection and review upon the Commission's website and upon request.

3.2. Any person who is required to file a form in accordance with the requirements of the Ethics Act, W.Va. Code §§ 6B-1-1 *et seq.*, may request that the format of a form be modified.

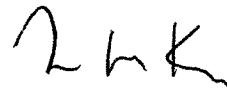
Second, you state that, in your opinion, the lobbyist registration fee for associations should be \$100.00. At present, the total cost for you to register as a lobbyist on behalf of the association is \$200.00 which includes the \$100.00 registration fee for you to register individually and an additional \$100.00 fee for you to register to lobby on behalf of your employer, the WV Association of Counties.

In our opinion, the plain language in the Ethics Act requires you and similarly situated individuals, under the circumstances described, to pay a total of \$200.00 to register as a lobbyist on behalf of your employer. See A.O. 2005-08, attached hereto, which interprets the relevant code provisions including West Virginia Code § 6B-3-3a.

To change the filing fee would, in the opinion of the Ethics Commission, require statutory amendment. As such, the Commission declines to amend the Rule in response to this request. As a matter of note, the fees are deposited in the State's General Fund. Hence, the Commission derives no direct monetary benefit from the fees.

In closing, thank you for your constructive comments. If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Theresa M. Kirk'.

Theresa M. Kirk
Executive Director