

# What couch?

AN ETHICS REVIEW

158 CSR 6 Use of Office for Private Gain, Including Nepotism

# **ETHICS ACT RULE**

# You Be the ~~Justice~~ Judge

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- Who thinks it is ethical for you to be on a committee to make recommendations on the hiring of your niece?
- Who thinks it is ethical for you to be on a committee to make recommendations on the hiring of your grandmother?
- Does it matter where they live?

# Nepotism

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- 3.3. "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.
- 3.4. 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.

# Nepotism

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- 3.5.a. To the extent possible, 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. If he or she is one of several people with the authority to make these decisions, others with authority shall make the decisions.

# You Be the ~~Justice~~ Judge

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- Can you ethically suggest a form of punishment for the misconduct of a relative employed by your Board?
- Can you ethically supervise your niece?

# Nepotism

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- 3.5.b. A public official or public employee **may not directly supervise a relative** or a person with whom he or she resides. This prohibition includes reviewing, auditing or evaluating work or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline or related matters. This prohibition does not extend to matters affecting a class of five or more similarly situated employees.

# You Be the ~~Justice~~ Judge

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- Can you ethically imply that your secretary's job includes picking up and delivering your dry cleaning to your home on her way home, since it's on her way anyway, and you've been friends for years?
- A surplus couch?



# Use of Subordinate for Private Gain

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- 4.1. After work hours - 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. An example of prohibited conduct would be a public official requiring a subordinate employee to **perform personal errands** for the official in order to maintain his or her public employment.

# You Be the ~~Justice~~ Judge

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- Can you ethically have the accountant balance your personal business books, since he is light on work and needs the practice?

# Use of Subordinate for Private Gain

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- 4.2. During work hours - 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. An example of prohibited conduct would be a public employee supervisor requiring state employees to repair a garage or pave a driveway for the supervisor during work hours. This subsection does not apply to de minimis work or services.

# Government Property

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- How would you define “Government Property”?
- Give examples...

# De minimus

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- What is “de minimus”?
- How would you apply that to Government Property use?

# You Be the ~~Justice~~ Judge

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- Can you ethically take home the stapler for your son to use to complete his school project?
- Can you ethically take a surplus desk home to create a home office for work exclusively on school board business?

# Use of Government Property

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

# You Be the ~~Justice~~ Judge

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- Can you ethically accept a free vacation from a vendor *before* recommending that vendor for a contract with the Board?
- Can you ethically accept a free vacation from a vendor *after* recommending that vendor for a contract with the Board?



# Kickbacks

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- It is unlawful for a public official or public employee to 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.

# Bribes

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- It is unlawful for a public official or employee to 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.

# You Be the ~~Justice~~ Judge

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- Can you ethically, while on duty for the Board, also perform work for a private entity as a telephone help desk worker?
- Does it matter if it is only 1 call a day?

# Private Work During Public Hours

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- Full-time 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.

# Other Rules

TO KEEP IN MIND

# Other Limitations

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- 10. The Ethics Act sets a minimum standard of conduct. When the Legislature or a public agency impose stricter standards, then public officials and public employees must comply with the stricter standards.
- See State Code and State and County Policies
  - Eg W. Va. Code 18A-2-1(a)(2) and WVBE Policy 5000

## W. Va. Code 18A-2-1(a)(2)

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- (2) The principal may not recommend for employment an individual who is related to him or her as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister;

# WVBE Policy 5000

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- Superintendent assigns a designee for the principal
- Designee is from central office, not the school



WHY DO WE CARE

# **VIOLATIONS OF THE ETHICS ACT**

# Violation of Ethics Act

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The Ethics Commission can impose one or more of these sanctions on violators of the Ethics Act:

- public reprimand; cease and desist orders; orders of restitution for money, things of value, or services taken or received in violation of the Ethics Act;
- fines not to exceed \$5,000 per violation; and reimbursement to the commission for the actual costs of investigating and prosecuting a violation.

# Violation of Ethics Act

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- In addition, the Ethics Commission may recommend to the appropriate governmental body that an offender be removed from office.
- The Commission can also file suit in circuit court for the enforcement of sanctions.
  - See West Virginia Code § 6B-2-4(s)(1).

Advisory Opinions

# DEALING WITH VENDORS

# Dealing with Vendors: AO 2007-02

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- “The basic concept of the Ethics Act is that public servants may not use their public positions for their own private gain or the private gain of others. The Act’s Legislative findings explain that the Act is intended to prevent public servants from using their public positions ‘.... to benefit narrow economic ... interests at the expense of the public at large...”

# Dealing with Vendors: AO 2007-02

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- Prohibits public officials from endorsing products, unless there is an overriding public benefit as approved by the Ethics Commission
  - Economic Development
- Letters of support of goods or services provide an indirect pecuniary benefit to the vendor and lend the prestige of the office to advance a vendor's private interest

# Vendor Gifts: AO 2006-07

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- “Ordinarily, public servants are prohibited from accepting gifts from vendors who do business, or seek to do business, with their agency.”
- Random drawing of door prize is no exception.

# Recognition Events: AO 2010-05

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- Expenditure of public funds for events to recognize employees limited to \$25 per employee, per fiscal year.
- May be allocated between one or more events or activities to recognize employees and promote employee morale.
- Pooling funds for year, \$100 limit for single employee
- **BUT MUST FOLLOW LOCAL POLICY IF MORE STRINGENT**



WHAT OTHER

**GOOD QUESTIONS DO YOU HAVE?**

MANY THANKS

**FOR ALL YOU DO FOR THE SCHOOL  
BOARDS IN WEST VIRGINIA!!**