

STATE OF WEST VIRGINIA
PRELIMINARY PERFORMANCE REVIEW OF THE
Ethics Commission

**Commission has been Active with
Respect to Disseminating Information
to the Public and Public Officials
Regarding the Ethics Act**

**Ethics Commission has Maintained a
High Level of Activity with Respect to
Enforcing the West Virginia Governmental Ethics Act**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
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May 2001

PE01-02-201

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John Sylvia
Director

May 6, 2001

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Ethics Commission*, which will be presented to the Joint Committee on Government Operations on Sunday, May 6, 2001. The issues covered herein are "Commission has been Active with Respect to Disseminating Information to the Public and Public Officials Regarding the Ethics Act" and "Ethics Commission has Maintained a High Level of Activity with Respect to Enforcing the West Virginia Governmental Ethics Act."

We conducted an exit conference with the *Ethics Commission* on April 26, 2001. We received the agency response on April 26, 2001.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

Issue 1: The Commission has been Active with Respect to Disseminating Information to the Public and Public Officials Regarding the Ethics Act.

The Commission participates in training programs presented by the State Division of Personnel and several State agencies and associations of public agencies and personnel. The Commission also distributes 16,000 copies of its quarterly newsletter to all State and county elected officials. Ethics brochures accompany all financial disclosure forms sent to those required to file. The Commission's web site is another tool used to provide information summarizing the Ethics Act. The Commission also makes presentations to public agencies, associations of public servants and the general public. Much information is disseminated informally by the Commission through telephone calls made by public officials requesting information on specific issues.

Issue 2: The Ethics Commission has Maintained a High Level of Activity with Respect to Enforcing the West Virginia Governmental Ethics Act.

An examination of the Commission's duties related to its role in enforcing the West Virginia Governmental Ethics Act shows that a high level of activity has been maintained, particularly given the Commission's staff of four. The Commission is most active with respect to processing financial disclosure statements and registering and monitoring lobbyists. It also publishes an annual directory of lobbyists. Of the Commission's duties, the issuing of advisory opinions is more common than processing complaints, but the volume of advisory opinions has fallen as many issues were dealt with in opinions issued early in the Commission's history. At the time of this report, the Commission had issued over 750 advisory opinions, thereby providing a considerable body of precedence that makes it unnecessary to duplicate opinions on the same issues. The Commission has received an increasing volume of informal requests for information. Informal requests are not recorded but the Commission feels that they are an important factor in keeping down the number of advisory opinions and formal complaints.

The Commission registered nearly 500 lobbyists in calendar year 2000 and collected nearly 1,500 lobbyist activity reports. Over 4,000 financial disclosure statements were filed by public officials and candidates for public office in 2000. These functions accounted for much of the Commission's activities.

Requests for employment exemptions are seldom rejected by the Commission due to the fact that officials generally discuss their desire for an exemption with Commission staff prior to filing a request. Few officials choose to file a formal request if they are informed that it is unlikely to be granted.

The Commission receives a relatively small number of complaints each year with few resulting in a violation during the years since the Commission's creation. Other complaints resulted in conciliation agreements which are a somewhat more common means for settling complaint cases.

WVC §6B-2-3 requires the Commission to issue an advisory opinion within thirty days of its request. Since the Commission meets monthly, it should not be difficult for the Commission to act upon advisory opinion requests in a timely manner. The Commission maintains a log book that records the date a request for either type of advisory opinion (Open Meetings Law or ethics opinion) is received. Although the issuing of an opinion can be tracked by referring to the State Register, the Commission does not maintain detailed records tracking the length of time required to do so. The Commission generally issues an opinion at the next meeting following its request. If the request for an opinion is received within a few days prior to a meeting, it may be held over for consideration until the next meeting. This provides the Commission with adequate time to study the request. Since the Commission only meets once each month, the result may be that some requests take slightly longer than thirty days to process.

A number of time frames are found in the WVC §6B-2-4 regarding the processing of complaints. The Commission maintains a form for each complaint that records the statutory time frames for its disposition. The Commission also maintains a database of complaints that includes the date of filing, the official's position and the final disposition of the complaint.

Recommendation 1:

The West Virginia Ethics Commission has performed satisfactorily and the Legislative Auditor recommends that the agency be continued.

Recommendation 2:

The Commission should consider maintaining data on the length of time required to issue each request for an advisory opinion.

Review Objective, Scope and Methodology

This is a Preliminary Performance Review of the West Virginia Ethics Commission as required by WVC §4-10-5. The Ethics Commission is responsible for the enforcement of the West Virginia Ethics Act.

Objective

The objective of this review is to examine the following issues:

- (1) How active is the Commission with respect to the dissemination of information?
- (2) How active is the Commission with respect to enforcing the requirements of the Ethics Act?
- (3) Are the reporting and other standards of the Ethics Act adequate?

The purpose of these questions is to determine if the Commission is adequately performing its duties according to the Ethics Act.

Scope

The overall objective of the Ethics Commission is to enhance the integrity of public officials and maintain citizens' trust in the operations of government. If the three functions listed above are not performed adequately, the Ethics Commission is not achieving its objective. The scope of this review is from the creation of the Commission in calendar year 1989 to January 2001. The review emphasizes the period from 1998 to 2000.

Methodology

The Legislative Auditor's Office obtained data from the Commission on the disposition of complaints back to the Commission's creation in 1989 until January 2001. Data for the Commission's other activities such as the number of lobbyists registered and advisory opinions were requested for the period from 1998 to 2000. Data on the Commission's activities were used to determine the Commission's adequacy in disseminating information and in the enforcement of the Ethics Act. Other data utilized included the ethics statutes and reporting forms from West Virginia and other states, with a focus on states surrounding West Virginia. Ethics statutes from various states were compared to that of West Virginia and the adequacy of the standards of the State's Ethics Act was determined. Three basic provisions of West Virginia's Ethics Act were compared to those of other states: 1) financial disclosure requirements, 2) revolving door provisions and 3) lobbyist expenditure reporting. Data from the Center for Public Integrity's 2000 report on financial disclosure laws in the states were utilized as well. This evaluation was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States.

Background

The West Virginia Ethics Commission was created in 1989 to enforce the West Virginia Governmental Ethics Act. The Commission is organized under the Department of Administration. The purpose of the Governmental Ethics Act is:

...to maintain confidence in the integrity and impartiality of the governmental process in the State of West Virginia and its political subdivisions and to aid public officials and public employees in the exercise of their official duties and employment; to define and establish minimum ethical standards for elected and appointed public officials and public employees; to eliminate actual conflicts of interest; to provide a means to define ethical standards; to provide a means of investigating and resolving ethical violations; and to provide administrative and criminal penalties for specific ethical violations herein found to be unlawful.

The Ethics Commission meets monthly and consists of twelve members, no more than seven of whom are members of the same political party. Members are appointed by the Governor with the advice and consent of the Senate and serve five-year terms. No appointed or elected official or candidate for such a position may serve on the Commission. The Commission has a staff of four including an executive director, a legal counsel, a paralegal, and an administrative secretary.

The Commission is primarily responsible for educating and advising public servants regarding the Act. The Commission issues advisory opinions to public officials who make written applications requesting them. Advisory opinions discuss whether an action or proposed action violates the provisions of WVC §61-10-15 or Chapter 6B of the West Virginia Code.

It is in the interests of public officials to obtain advisory opinions from the Commission regarding an action or proposed action and whether it violates the provisions of WVC §61-15-10 or Chapter 6B. This is due to the fact that according to WVC §6B-2-3, if an official fails to obtain an advisory opinion, he or she is subject to sanctions by the Commission or criminal prosecution. If, however, an official acts on the guidelines issued by the Commission, he or she is immune from sanctions and has an absolute defense against criminal prosecution with respect to actions taken.

The Commission's Committee on Open Governmental Meetings has held meetings since July 1999. That year, the Commission was given responsibilities with respect to the Open Governmental Meetings Act. The Committee on Open Governmental Meetings gives written advisory opinions to governing bodies and their members on whether proposed action or action of an ongoing nature violates the law. The opinions are binding on the requester, who has an absolute defense in any civil suit or criminal prosecution if the opinion is relied upon in good faith, as is the case with other advisory opinions. The Committee meets once a month, usually on the first Thursday of the month. Requests for written advisory opinions must be submitted in writing at least 10 days before.

The Commission's requested budget for FY 2001 was \$379, 717 which was a small increase

over the amount budgeted for FY 2000. As Table 1 illustrates, the Commission's budget has remained fairly stable over the last several years with expenditures falling under the total amount budgeted each year.

Table 1: Ethics Commission Budget and Expenditures

Fiscal Year	Total Budget	Actual Expenditures
FY 1997	\$368,111	\$321,197
FY 1998	\$368,111	\$313,766
FY 1999	\$375,040	\$269,111
FY 2000	\$373,717	\$296,730
FY 2001	*\$364,588	**\$357,540
FY 2002	***\$366,831	
*adjusted budget; FY 2001 appropriation was \$375,864 **Projected expenditures ***FY 2002 appropriation		

Comparison of West Virginia's Ethics Laws With Those of Other States

Some provisions of West Virginia's Ethics Act are weaker than those of many other states. West Virginia requires less information in the financial disclosure statements, filed by public officials and candidates for public office, than many other states. The State's "revolving door" provision only applies to certain public officials and employees and provides for a shorter prohibition period after leaving government service than that of other states. Former officials who appear in a representative capacity before their former employing agency may encounter issues with which they were previously involved, since the six month prohibition period is relatively short. Since the Code permits the granting of exemptions, these restrictions can be set aside. Finally, the State's lobbyist expenditure reporting requirements do not include information such as salaries and office costs and therefore do not give a full picture of most costs associated with lobbying efforts.

Financial Disclosure Statements

Financial disclosure statements filed with the Ethics Commission by public officials or candidates for public office as required by WVC §6B-2-6 lack financial information that is required by other states. Examples include information on spousal income and property ownership. WVC

§6B-2-7 states that:

This subdivision does not require a person filing the statement who derives income from a business, profession or occupation to disclose the individual sources and items of income that constitute the gross income of that business, profession or occupation, nor does this subdivision require a person filing the statement to report the source or amount of income derived by his or her spouse.

The wording of WVC §6B-2-7 does not require candidates for public office to report sources of income from businesses operated by a spouse. Some surrounding states require the reporting of spousal income. Kentucky Code §6.787 requires information that includes:

- All occupations and positions held by the filer or his/her spouse in any business, partnership, or corporation.
- Information on any businesses, investments, or securities in which the filer, his/her spouse, or children had an interest of \$10,000 or 5% ownership interest or more.
- The sources and form of the gross income of the filer and his/her spouse.
- All positions of a fiduciary nature in a business.
- Information on all real property, other than the filer's primary residence, in which there is an interest of \$10,000 or more held by the filer, his/her spouse, or children.

It is clear that Kentucky's ethics law requires the reporting of nearly as much financial information for a candidate's spouse as for the candidate. Also, Kentucky law requires the ownership of real estate to be reported in addition to income and its sources. This also would be useful information for West Virginia's financial disclosure statement.

Chapter 11 of the Pennsylvania Code requires a statement of financial interests which includes information on "any direct or indirect interest in any real estate which was sold or leased to the Commonwealth, any of its agencies or political subdivisions; or which was the subject of any condemnation proceedings by the Commonwealth, any of its agencies or political subdivisions."

The State of Maryland uses three different financial disclosure statements. There is a standard form and separate forms to be used by members of the General Assembly or part-time members of state boards and commissions. Real estate holdings must be reported on any of these forms. A separate schedule must be completed for real property interests and detailed information about the property is required. Another schedule is required for any interests in corporations or partnerships and includes the same sort of detailed information. Other schedules must be completed for interests in non-corporate business entities; gifts from persons regulated by the State in excess of \$25 in value or for a series of gifts totaling \$100 in value; offices, directorships, salaried employment and similar interests held by the filer, spouse or dependent children with business entities doing business with the State; debts, excluding retail credit accounts; family members employed by the State; all places of employment or businesses owned by the filer or his immediate family; any additional information the filer wishes to report.

The nonpartisan, nonprofit Center for Public Integrity released a report in 2000 rating financial disclosure laws in all 50 states. West Virginia ranked 43rd and received a failing grade of 36.5 out of a possible score of 100 in various categories. Financial disclosure provisions were rated on the basis of the types and completeness of information required in each state. The Center analyzed disclosure requirements on the basis of the following information categories: employment information, officer/director information, investment information, client information, real property information, family information, and penalties. Washington received the best score, 98 points. West Virginia's score was lower than that received by any of its surrounding states as well, with Pennsylvania being the only adjacent state to also receive a failing score (47.5 points).

The highest rated adjacent state, Virginia, received a score of 85.5, ranking it eighth in the nation. Virginia's statement of economic interests scored considerably better than West Virginia's financial disclosure statement because of the inclusion of considerably more information in a number of categories. Under the category of employment information, Virginia's statement contains information on spouses and dependents while West Virginia's does not. With respect to information on business entities with which the filer is an officer or director, Virginia requires information on both the filer and his/her spouse while West Virginia requires no information of this type. West Virginia also requires less complete information on investments in that its statement does not contain information on the investments of spouses or dependents. West Virginia also does not require any information on filers' spouses or dependents. As has already been mentioned, real property is another category in which West Virginia requires no information. Family information listing the names of spouses and dependents was another category for which the State did not require information.

The State's "Revolving Door" Provision

Thirty states, including West Virginia, have ethics code provisions that place restrictions on state employees' and public officials' post-employment opportunities. "Revolving door" provisions primarily prohibit former state employees or officials from appearing in a representative capacity before their former state agency within a specified time frame. The time frames vary from six months to two years. In some states, the prohibition applies only if the employee worked on, or was responsible for, an issue before the agency while in state service. In a couple of states, the prohibition applies to employees who hold certain positions or who receive large salaries. Provisions may apply to public employees in general, executive branch employees, members of the state legislature or their staffs, depending on the state.

West Virginia's ethics provisions are somewhat different from that of other states. For example, according to WVC §6B-2-5, a former employee of a state agency may appear in a representative capacity before his/her former employing agency regarding a matter which arose during their period of employment, if the agency gives its consent. In many states, former public employees are always prohibited from appearing before their former employing agency in a representative capacity regarding such a matter. WVC §6B-2-5(g) further states:

No elected or appointed public official and no full-time attorney or accountant shall,

during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed...

The six month prohibition against representing clients before an official's former employing agency is not absolute because the Ethics Commission is permitted to grant exemptions on a case-by-case basis. Exemptions may be granted if the six month prohibition period, due to an individual's education and experience, would in effect deprive that individual of his or her livelihood. As Table 2 in Issue Area 2 illustrates, exemption requests have usually been denied and only four requests have been made during the period examined. The number of exemption requests for public employees seeking employment with a person regulated by their agency, found in WVC §6B-2-5(h), are more common than requests made by public officials covered by WVC §6B-2-5(g). The number of such requests are still relatively small with no more than twenty-two during any one year from 1999-2000.

Members of the Legislature and their staff are not subject to the six month prohibition period found in WVC §6B-2-5(g). The short six month prohibition period, the statutory provision that permits exemptions and the status of legislators and their staff, makes West Virginia's "revolving door" provision weaker than that of many other states.

In 1967, Florida became the first state to enact a Code of Ethics and Conduct for Public Officers and Employees. Currently FS §112.313 states:

No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

The same applies to employees of state agencies in Florida:

No agency employee shall personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

A survey of the states surrounding West Virginia shows that the statutes of all states except Virginia contain ethics provisions. The House and Senate Rules of Virginia do, however, contain ethics guidelines. Of the other surrounding states, most place greater restrictions on the employment opportunities permitted to former state employees and legislators than those contained in the West Virginia Code.

Section 102.03 of the Ohio Revised Code establishes restrictions during and after employment for public officials and employees generally, including members of the General Assembly:

For a period of one year after the conclusion of employment or service as a member or employee of the general assembly, no former member or employee of the general assembly shall represent, or act in a representative capacity for, any person on any matter before the general assembly, any committee of the general assembly, or the controlling board.

The Ohio Code also prohibits present or former public officials or employees from representing, for twelve months following employment, a client or any person on any matter in which he or she officially participated. Furthermore, for twenty-four months following the conclusion of employment, no former commissioner or attorney examiner of the Public Utilities Commission can represent a utility before any state board, commission or agency.

Kentucky also places restrictions on employment opportunities offered to former employees. Kentucky statutes contain separate ethics provisions for the executive and legislative branches of government. KRS §11A.040, which is under the chapter entitled “Executive Branch Code of Ethics,” prohibits any business of which at least five percent is owned by a former executive branch employee, from negotiating a contract with their former agency within six months of terminating their employment. Executive branch employees are also prohibited from accepting employment with a business involved in any matter in which he or she was directly involved for at least six months after terminating employment with the State. An employee cannot become a lobbyist or represent a person or business before a state agency regarding a matter in which he or she was directly involved, for at least one year from the latter of either the date of termination of employment or the date an elected public servant’s term expired.

KRS §6.757 places restrictions on former legislators becoming lobbyists. “A former legislator shall not be a legislative agent, other than for a public agency, until after two (2) years have elapsed since the date the legislator left office.”

In Pennsylvania, PC §1103 states:

No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

Pennsylvania also prohibits former executive-level employees for two years, from being employed by, receiving compensation from, assisting or representing a business he or she actively helped 1) recruit to the state, 2) induced to open a new facility or branch in the state, or 3) induced to expand an existing facility in the state. This prohibition only applies if the recruitment or inducement was accompanied by a state grant or loan.

The Maryland Code also places restrictions on both former state employees and former members of the General Assembly. MC §15-504 states:

(1) Except for a former member of the General Assembly, who shall be subject to the restrictions provided under paragraph (2) of this subsection, a former official or employee may not assist or represent a party, other than the State, in a case, contract, or other specific matter for compensation if:

- (i) the matter involves State government; and*
- (ii) the former official or employee participated significantly in the matter as an official or employee.*

(2) (i) Except as provided in subparagraph (ii) of this paragraph, until the conclusion of the next regular session that begins after the member leaves office, a former member of the General Assembly may not assist or represent another party for compensation in a matter that is the subject of legislative action.

This means that a former Maryland state employee may never assist or represent a party under some circumstances, while former members of the General Assembly are effectively prohibited from such activity for at least a year after leaving office. This prohibition does not extend to the representation of a state or local governmental entity by former General Assembly members.

Lobbyist Expenditure Reporting

Several surrounding states require more information in lobbyist expenditure reports than West Virginia. Such information includes expenditures on offices and salaries. Such information is not required by WVC §6B-3-4. Kentucky law requires lobbyists to report food, beverages, lodging and transportation. Office expenses, consulting fees, educational and promotional items, and miscellaneous expenses must also be reported. Pennsylvania requires an estimate of the total spent for personnel and office expenses related to lobbying, including benefits, vehicle allowances, bonuses and reimbursable expenses. Maryland requires the reporting of salaries, compensation, reimbursed expenses and office expenses.

Issue 1: The Commission has been Active with Respect to Disseminating Information to the Public and Public Officials Regarding the Ethics Act.

WVC §6B-2-2 which discusses the general powers and duties of the Commission states:

The commission shall... (2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act; and (3) provide assistance to agencies, officials and employees in administering the provisions of this act...

The Commission participates in training programs presented by the State Division of Personnel and several State agencies and associations of public agencies and personnel. The Commission also distributes copies of its quarterly newsletter to all State and county elected officials. As Table 2 illustrates, 16,000 newsletters are distributed annually. Ethics brochures accompany all financial disclosure forms sent to those required to file. The Commission's web site is another tool used to provide information summarizing the Ethics Act. The Commission also makes presentations to public agencies, associations of public servants and the general public. Much information is disseminated informally by the Commission through telephone calls made by public officials requesting information on specific issues.

Advisory opinions issued by the Commission must be published by the Secretary of State in the Code of State Rules, according to WVC §6B-2-3. Lists of opinions, including Open Meetings Law advisory opinions, are published and copies of opinions are available from the Commission. Public officials are referred to previous opinions concerning any issue already dealt with by the Commission.

Conclusion

Given the small staff employed by the Commission, the fact that it is able to distribute 16,000 newsletters annually plus make presentations as well as respond to numerous telephone requests for information, shows that the Commission is quite active in its role of disseminating information. The Commission has demonstrated a commitment to informing public officials and the public regarding the requirements of the Ethics Act.

Issue 2: The Ethics Commission has Maintained a High Level of Activity with Respect to Enforcing the West Virginia Governmental Ethics Act.

An examination of the Commission’s duties related to its role in enforcing the West Virginia Governmental Ethics Act shows that a high level of activity has been maintained, particularly given the Commission’s staff of four. The Commission is most active with respect to processing financial disclosure statements and registering and monitoring lobbyists. It also publishes an annual directory of lobbyists. Table 2 summarizes the Commission’s activities for 1998-2000. Issuing advisory opinions is more common than processing complaints, but the volume of advisory opinions has generally fallen as many issues were dealt with in opinions issued early in the Commission’s history. Although the volume of advisory opinions increased slightly during the period examined in Table 2, the Commission issued much larger numbers of opinions during its early years. At the time of this report, the Commission had issued over 750 advisory opinions, thereby providing a considerable body of precedence that makes it unnecessary to duplicate opinions on the same issues. The Commission has received an increasing volume of informal requests for information. Informal requests are not recorded but the Commission feels that they are an important factor in keeping down the number of advisory opinions and formal complaints.

As Table 2 illustrates, one request for an employment exemption under WVC §6B-2-5(g) was rejected during calendar year 2000. As was already mentioned, only four such requests have been made during the period examined. No requests under WVC §6B-2-5(h) were rejected by the Commission due to the fact that officials generally discuss their desire for an exemption with Commission staff prior to filing a request. Few officials choose to file a formal request if they are informed that it is unlikely to be granted.

Table 2: Summary of Commission Activities

Activity	1998	1999	2000
Financial Disclosure Statements Filed	3,287	2,213	4,172
Lobbyist Registrations	527	434	489
Lobbyist Reports Filed	1,581	2,170	1,467
Lobbyist Directories Published	1,500	1,500	1,500
Employment Exemptions Requested/Granted	10	2	22
Revolving Door Exemptions Requested/Granted	0	0	4/1
Advisory Opinion Requests	31	39	42
Open Meetings Advisory Requests	0*	14	16
Total Complaints Filed	21	12	20
Newsletters Published	16,000	16,000	16,000
*The Commission’s duties with respect to the Open Governmental Meetings Act began in 1999			

In order to verify which public officials are required to file financial disclosure statements, the Commission's staff contact the county clerk and school board for each county at the end of each election cycle to obtain the names of incumbent officeholders. The staff also check annually with the municipal clerks of Charleston and Fairmont, which are the only municipalities which have opted to require their elected officials to file. Municipal officials are not required by statute to file. Candidates for public office are tracked by contacting each county clerk and the Secretary of State's Office to obtain a list of candidates.

Registration forms are provided to those who ask to register as lobbyists. Expenditure report forms are sent to all registered lobbyists prior to the relevant reporting date. The Commission follows up and secures completed reports from all registered lobbyists.

The Commission does not have any way of knowing who is engaged in lobbying or how many of those who are lobbying are required to register. Over the years, lobbyists who are registered have demonstrated a keen interest in seeing that their colleagues are also registered and reporting. It is not uncommon for members of the Legislature to check with the Commission to see if a particular person is registered.

The Commission registers those who file the appropriate forms with the Commission and the only mechanism available to the Commission to compel a lobbyist to file is acting on a written sworn complaint filed by someone who provides information that someone who was lobbying was required to file and had not done so. WV Code §6B-3-9 states:

(b) A person who is subject to the registration and reporting requirements of this article [Article 3 applies only to lobbyists] and who fails or refuses to register or who fails or refuses to file a required statement or report or who otherwise violates the provisions of this article may be the subject of a complaint filed with the ethics commission and may be proceeded against in the same manner and to the same ends as a public officer or public employee under the provisions of this chapter.

The Ethics Act makes it clear that those engaged in lobbying are required to register only if they, (1) are compensated for lobbying or (2) spend money on public servants in furtherance of their lobbying activity. There is a \$25 threshold for expenditures. That is to say, a lobbyist who spent only \$20 in a given year would not be required to register as a lobbyist, unless he or she was compensated for their lobbying. Some lobbyists are, therefore, not required to register.

Table 3 shows that the Commission receives a relatively small number of complaints each year with few resulting in a violation during the years since the Commission's creation. Other complaints resulted in conciliation agreements which are a somewhat more common means for settling complaint cases.

WVC §6B-2-3 requires the Commission to issue an advisory opinion within thirty days of its request. In response to a question regarding adherence to this time frame the Commission stated: "The Executive Director is responsible to see that written requests for formal advisory opinions are

presented to the Commission on a timely basis. It is rare that the Commission does not render an opinion during the meeting at which it receives the request." Since the Commission meets monthly, it should not be difficult for the Commission to act upon advisory opinion requests in a timely manner.

A number of time frames are found in the WVC §6B-2-4 regarding the processing of complaints.

- 3 days: Acknowledge receipt of complaint by mail.
- 14 days: Appointment of investigative panel.
- 45 days: Period after mailing of notice of investigation for investigative panel to consider complaint.
- 80 days: Period before hearing by which the respondent shall be served by certified mail with the statement of charges and hearing date.
- 45 days: Period for making a final decision after receipt of the entire record of a hearing held before a hearing examiner.
- 21 days: Period for making a final decision after receipt of the entire record of an evidentiary hearing held by the board.

Regarding the statutory time frames for processing complaints the Commission stated:

The Commission's paralegal maintains a chart documenting the status of all open complaints. This chart includes a complete chronology of each action taken on each formal complaint. Some facets of an investigation and prosecution lend themselves to specific time requirements and these are met. Others have no specific time established and the Executive Director is responsible to see that they are accomplished in a reasonable time. The Commission can track the exact time frames for individual written requests for formal advisory opinions and sworn written complaints.

The Commission maintains a form for each complaint that records the statutory time frames for its disposition. The Commission also maintains a database of complaints that includes the date of filing, the official's position and the final disposition of the complaint.

The Commission maintains a log book that records the date a request for either type of advisory opinion is received. Although the issuing of an opinion can be tracked by referring to the State Register, the Commission does not maintain detailed records tracking the length of time required to do so. The Commission generally issues an opinion at the next meeting following its request. If the request for an opinion is received within a few days prior to a meeting, it may be held over for consideration until the next meeting. This provides the Commission with adequate time to study the request. Since the Commission only meets once each month, the result may be that some requests take slightly longer than thirty days to process.

Table 3: Complaint Disposition History

Year	Total Complaints Filed	Withdrawn	Dismissed Without Investigation	Dismissed After Investigation	Dismissed After Hearing	Conciliation Agreement Reached	Violation/Conviction	Pending Action	Other Action
1989	1	0	1	0	0	0	0	0	0
1990	14	2	7	2	0	3	0	0	0
1991	22	0	11	8	0	2	1	0	0
1992	13	0	8	3	0	0	1	0	1
1993	22	1	12	3	1	2	2	0	1
1994	12	0	10	1	0	1	0	0	0
1995	14	1	10	2	0	1	0	0	0
1996	22	0	15	4	1	0	1	0	1
1997	15	0	9	4	0	1	0	1*	0
1998	21	0	15	4	1	0	1	0	0
1999	12	0	8	3	0	1	0	0	0
2000	20	2	10	4	0	3	0	1**	0
2001	3	0	0	0	0	0	0	3***	0

*Circuit Court Appeal, **Hearing, ***New Complaints

Conclusion

The Commission has been active with respect to the filing of financial disclosure statements by public officials and the filing of registration and monitoring forms by lobbyists. Both incumbents and candidates are monitored to verify that they file financial disclosure statements. While it is more difficult for the Commission to track the activities of lobbyists, especially since some lobbyists are not required to register, public officials and other lobbyists do sometimes verify the status of certain lobbyists. A means to file complaints against lobbyists also exists.

The Commission receives very few formal complaints each year considering the number of public officials and lobbyists registered. This means that no backlog exists and there is no obvious reason why delays should occur in processing complaints. The Commission does maintain a form that tracks the time frames for each step of the complaint process.

Advisory opinions are more common than complaints though their volume is also relatively low. Since the Commission meets monthly and an opinion must be issued within 30 days, the Commission does not have difficulty responding in a timely manner to requests for opinions. Requests are generally considered at the next meeting following their receipt. While some requests may be held over for slightly longer than thirty days due to the need to study them before the next meeting, the Commission does not have a backlog of such requests. Generally, only a few requests are received each month.

Recommendation 1:

The West Virginia Ethics Commission has performed satisfactorily and the Legislative Auditor recommends that the agency be continued.

Recommendation 2:

The Commission should consider maintaining data on the length of time required to issue each request for an advisory opinion.

APPENDIX A
Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

April 23, 2001

Richard Alker, Executive Director
Ethics Commission Office
1207 Quarrier Street, 4th Floor
Charleston, West Virginia 25301

Dear Mr. Alker:

Enclosed is a draft copy of the Preliminary Performance Review of the *Ethics Commission*. We will contact you later in the week to setup an exit conference.

Should you have any questions, please contact Brian Armentrout, Research Manager.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

Joint Committee on Government and Finance

APPENDIX B

**Nationwide Financial Disclosure Rankings
by the Center for Public Integrity**

State	Rank	Point Total	State	Rank	Point Total
Washington	1	98	Nevada	27	56.5
Alabama	2	96	Mississippi	28	55.5
Alaska	3	95	Indiana	29	54.5
Hawaii	4	91.5	New Jersey	30	54
Arizona	5	91	North Dakota	31	49.5
Texas	6	88	Tennessee	31	49.5
Wisconsin	6	88	Georgia	33	49
Virginia	8	85.5	Maine	33	49
New York	9	85	Minnesota	35	48.5
North Carolina	10	82.5	Montana	36	48
Oregon	11	82	Nebraska	36	48
California	12	81	Oklahoma	36	48
Connecticut	13	80	Pennsylvania	39	47.5
Rhode Island	13	80	South Dakota	40	47
Missouri	15	76.5	Wyoming	41	45
Colorado	16	76	Illinois	42	43.5
South Carolina	16	76	West Virginia	43	36.5
Arkansas	18	75	New Hampshire	44	36
Massachusetts	18	75	Iowa	45	33.5
Maryland	20	71	Louisiana	46	32
Delaware	21	70	Utah	49	1
Kentucky	21	70	Idaho	50	1
Ohio	23	66	Michigan	50	1
Kansas	24	64.5	Vermont	50	1
Florida	25	64			
New Mexico	26	61.5			

APPENDIX C
Agency Response



STATE OF WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION
4TH FLOOR - LITTON BUILDING
1207 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301-1838
(304) 558-0664
FAX (304) 558-2169

RICHARD M. ALKER
EXECUTIVE DIRECTOR

April 26, 2001

John Sylvia, Director
Performance Evaluation and Research Division
Office of Legislative Auditor
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

Dear Mr. Sylvia:

The Commission Staff has reviewed a draft copy of the Preliminary Performance Review of the Ethics Commission and generally concurs with your findings and recommendations.

Your observations about how our Act deals with financial disclosure, lobbyist reporting and revolving door are accurate. Obviously, any change in those provisions would require specific legislative action. However, I can assure you that the principal provisions of the Code of Conduct established in our Ethics Act are among the best and most comprehensive in the nation. We are fortunate to have the Code we have.

I would like to speak briefly to our budget. While I know there are limits on the period of time your report can cover, I believe it is important to note that the Commission's current and future budgetary situations are significantly different than past years. The FY 2001 budget appropriation was reduced by Executive decree to \$365,588 of which \$357,540 is projected to be expended by the end of FY 2001 this June. See the enclosed chart patterned on the one in your Review.

The FY 2002 budget appropriation is \$366,831, a 3% reduction from the amount sought. The recent increase in the per diem and daily expense allowance for our 12 Commission members will probably add \$10,000 to the Commission's FY 2002 expenditures. The reduction in our budget and the increase in fixed expenses will make it difficult for the Commission to maintain its operation at current levels through FY 2002.

I appreciate the thoroughness of your inquiry and the courtesy of your personnel.

Very truly yours,

Richard M. Alker

Table 1. Ethics Commission Budget and Expenditures

Fiscal Year	Total Budget	Actual Expenditures
FY 1997	\$368,111	\$321,197
FY 1998	\$368,111	\$313,766
FY 1999	\$375,040	\$269,111
FY 2000	373,717	\$296,730
FY 2001	\$364,588 (1)	\$357,540 (2)
FY 2002	\$366,831 (3)	

(1) **FY 2001 Budget Request** \$379,717
FY 2001 Budget Appropriation \$375,864
FY 2001 Budget Adjusted \$364,588

(2) **Projected FY 2001 expenditures**

(3) **Actual Budget Appropriation**