

West Virginia Ethics Commission



Prohibited Interest in a Public Contract

The Ethics Act prohibits a public official, a public employee or a member of his or her immediate family from having an interest in the profits or benefits of a contract if the official, employee or family member have either direct authority to enter into the contract or have control over the contract.

This prohibition extends to businesses with which the official, employee or family member are associated.

Direct authority or control over a contract

Legislative Rule 158-8-2 states that:

Examples of individuals with direct authority and control over the awarding of public contracts include all elected or appointed public officials in the executive branch of City, County and State government, superintendents, assistant superintendents, purchasing directors, County Commissioners, County Board members and City managers.

In addition, Advisory Opinions issued by the Ethics Commission have found the following persons to exercise "control" over a contract for purposes of the contracts provisions in the Ethics Act (at W.Va. Code § 6B-2-5(d)):

- An individual who oversees the administration of the contract or monitors or supervises the services provided under the contract (A.O. 95-02), and
- A town council member has authority and control over a lease agreement with the town even if the member is fully recused from voting thereon. (A.O. 2013-19).

Some examples those who do not exercise authority and control:

- A city council member may continue a lease agreement with the city building commission when she had no authority or control over the lease when it was executed. (A.O. 2015-05)
- A county building commissioner may purchase and develop property owned by a county urban renewal authority because he or she does not have authority or control over contracts of the county urban renewal authority. (A.O. 2015-16)

“Immediate family members” defined

As used in the contracts section of the Ethics Act, an “immediate family member” means the public official’s or employee’s spouse with whom he or she is living as husband and wife, any dependent child or children, any dependent grandchild or grandchildren and a dependent parent or parents.

Businesses with which official is associated

For purposes of this prohibition, public servants and their immediate family members are “associated” with a business if they are a director or officer in the business or if they hold stock in the business which constitutes 5% or more of the outstanding stock of any class.

Interests which are not prohibited

The Ethics Act provides that certain interests are “limited” and therefore do not constitute a “prohibited financial interest” in a public contract. “Limited interests” are:

- An interest which does not exceed \$1,000 in the profits or benefits of a public contract or contracts in a calendar year, and
- An interest as a creditor of a public official or employee who exercises control over the contract (or a member of his or her immediate family) if the amount is less than \$5,000.

If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules set forth in the Ethics Act.

Exception for Legislators

Members of the Legislature may contract with any governmental body but they may not use the prestige of their office to obtain unwarranted advantage in the awarding of the contract. If a Legislator has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial interest. Legislators also must comply with the voting rules set forth in the Ethics Act.

Exception for part-time appointed officials

A part-time appointed public official is not prohibited from entering into contracts over which he or she may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation of the contract, has been recused from deciding or evaluating the contract, has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

These exceptions may not be relied upon by county officials, who are governed by the stricter limitations in W.Va. Code § 61-10-15. (Refer to the Ethics Commission Guideline entitled “W.Va. Code § 61-10-15 Governing County Officials and County Schools.”)

Contracts being put out on bid

The Ethics Act does not govern the contract bidding process. This is governed by other provisions of the West Virginia Code, by local ordinances, or by an agency’s procurement policies. However, if an agency wants to contract with one of its officials or employees, normally it must seek a contract exemption from the Ethics Commission. *For more information, refer to the Guideline entitled “How to Seek a Contract Exemption.”*

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