

Contract Exemption 2017-08

Issued on November 2, 2017, by

The West Virginia Ethics Commission

Opinion Sought

The **Hancock County Commission** requests an exemption to allow its Sheriff's Department to use Water World Car Wash, a business owned by County Commissioner Jeff Davis.

Facts Relied Upon by the Commission

The Hancock County Sheriff's Department currently use two automatic car washing businesses to wash the sheriffs' county cruisers. The first car wash is Water World Car Wash ("Water World") which is owned by Hancock County Commissioner Jeff Davis.

The Sheriff's Department divides its patrol of the county into two zones: northern and southern. Water World is in the City of Chester in the northern part of Hancock County. Currently, deputies who are working in the northern zone use Water World. There are other automatic car washes near Chester. For example, Up Town Car Wash and Wash Wind Auto Bath are in Liverpool, Ohio, within four miles of Chester. According to the Sheriff, the Sheriff's Department has not considered using the two Ohio car washes because they are not in West Virginia.

The second car wash used by the Sheriff's Department is Falling Waters Car Wash ("Falling Waters"), formerly known as Tender Touch Car Wash, Inc. Deputies currently use Falling Waters when they are working in the southern zone. Falling Waters is located in Brooke County, but it is within a mile of Hancock County's southern border.

Falling Waters is a 30-minute drive from Water World. The Requester states that Lazer Wash located in the southern part of the county is the only other automatic car wash in Hancock County.

The Sheriff's Department employs 29 deputies who have each been assigned a cruiser. The Sheriff's Department divides the county into northern and southern zones. The deputies drive their assigned cruisers to and from work. The Sheriff states that each deputy regularly works shifts in both the northern and southern zones. The Sheriff states that each cruiser therefore is present in both zones every week and sometimes as frequently as every other day. The Sheriff's Office does not require cruisers to be washed on a particular schedule.

The Requester states that Water World (in the northern zone) charges the county \$8 per wash and Falling Waters (in the southern zone) charges the county \$6 per wash. The

County paid Water World approximately \$500 per month from January through May 2017 and has not utilized Water World since May 2017.

Provisions Relied Upon by the Commission

W. Va. Code § 61-10-15(a) states, in pertinent part:

It is unlawful for ... any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer ..., he or she may have any voice, influence or control

W. Va. Code § 61-10-15(h) states:

Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-b of this code for an exemption from subsection (a) of this section.

Analysis

W. Va. Code § 61-10-15 imposes criminal penalties against county officers, including county commissioners, who are pecuniarily interested, either directly or indirectly, in the proceeds of a public contract over which they may exercise voice, influence or control. The Ethics Commission does not enforce this statute, but the Legislature has charged the Commission with interpreting it. W. Va. Code § 6B-2-3(a). Pursuant to its statutory mandate, the Commission previously determined, in Advisory Opinion 1995-24, that for purposes of W. Va. Code § 61-10-15, a county commissioner has “voice, influence or control over all contracts entered into by the County Commission or the County Sheriff’s Department.”¹

Accordingly, the Ethics Commission finds that since Hancock County Commissioner Jeff Davis may exercise voice, influence or control over the Sheriff’s Department’s contracts, including car wash services, the Sheriff’s Department may only use Water World if the Ethics Commission grants the Hancock County Commission a Contract Exemption.

¹ In Advisory Opinion 1995-24, the Commission also determined that a county commissioner does not have a pecuniary interest in the contracts of the Sheriff’s Department under the lower standard in the prohibited contracts provision of the Ethics Act at W. Va. Code § 6b-2-5(d)(1). For a fuller explanation of the different standards, see Advisory Opinion 2011-02.

The Ethics Commission may grant an exemption from the prohibitions in W. Va. Code § 61-10-15 only if it finds the prohibition will result in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency.

The Requester states:

The county believes it would incur needless and excessive taxpayer expense if it were to restrict its deputies to the use of just one of the car wash locations. This practice would result in additional mileage to the vehicles for round-trips just for a car wash, increased fuel costs for the same, and lost time from the regular patrol areas just to make said trips. Moreover, requiring deputy vehicles to be washed in the southern end of the county would force the largest contingent of deputies to leave their designated patrol area just to have a vehicle washed.

The Sheriff stated the following in a letter to the Hancock County Commission: "The physical location of the business in question [Water World] makes it highly useful for our needs and would create an unnecessary amount of additional vehicular miles if we were restricted to utilizing only the business located at the most southern local [sic]."

The Ethics Commission finds, however, that since each cruiser is frequently in the southern zone, it would not inconvenience the Sheriff's Department to use only car washes in the southern zone. All deputies, even those working in the northern zone, could wash their cruisers when they work in the southern zone and therefore would not have to leave their regular patrol areas. Moreover, the car wash currently being used in the southern zone, Falling Waters, provides a cost savings of \$2 per wash.

The Ethics Commission finds that prohibiting the Hancock County Sheriff's Department from using Water World Car Wash, a business owned by Hancock County Commissioner Jeff Davis, would not cause the Hancock County Commission to suffer excessive cost, undue hardship or other substantial interference with the operation of the County Commission or the Sheriff's Department. Therefore, the Ethics Commission hereby denies the Contract Exemption.

The Ethics Commission notes that exemptions must be granted on a case-by-case basis. Therefore, this Contract Exemption is limited to the facts and circumstances of this particular case, and may not be relied upon as precedent by other persons or entities.


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission