

Contract Exemption 2020-01

Issued on January 2, 2020, by

The West Virginia Ethics Commission

Opinion Sought

The **Town of Fairview** seeks an exemption to hire Council members Don Pyles and Johnny Knotts as contract workers.

Facts Relied Upon By the Commission

The Town of Fairview has been contracting with Council member Don Pyles to perform work for the Town's Water Department and seeks to continue to do so. It also seeks to contract with Council member Johnny Knotts to perform work on a limited basis for the Street Department.

The Water Department needs help because the supervisor broke his leg and another employee resigned. While the Water Department supervisor is still capable of overseeing the department during its operating hours, due to his injuries he is unable to perform physical labor. For example, he cannot fix broken water lines or operate the Town's tractor.

The Town states that Pyles has offered to continue working for the Water Department, and that he is certified in the field although it does not indicate the nature of his certification. It states that he will work for the Water Department for approximately 10 hours a week to fix broken water lines and to perform other manual labor as needed at the rate of \$8.75 per hour.

The Street Department is short-staffed because it re-assigned its only employee to the Water Department so that that employee may be trained to become a Water Department employee.¹ Knotts has agreed to perform snow removal for the Street Department as needed during inclement weather at the rate of \$8.75 per hour.

The Town states that both Pyles and Knotts recused themselves from discussions and votes regarding the decision to hire them as contract workers. The Town states that Pyles and Knotts will not be on the Town's payroll, and that the Town will issue them Internal Revenue Service ("IRS") Miscellaneous Income forms (1099-MISC).

The Town does not indicate how many hours it anticipates having Pyles or Knotts to work.

The Town states that it has run "help wanted" advertisements for both positions in the Times West Virginian and Monster.com and no one has applied. The advertisement in

¹ The Town does not state whether it has other Street Department employees.

the Times West Virginian ran on two occasions for approximately three days each time, while the Monster.com advertisement ran for approximately 14 days.

Provisions Relied Upon By the Commission

W. Va. Code § 6B-2-5(d)(1) states, in relevant part:

In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control

...

W. Va. Code § 6B-2-5(d)(2) states, in relevant part:

In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed one thousand dollars in the profits or benefits of the public contract or contracts in a calendar year;

...

W. Va. Code § 6B-2-5(d)(3) states, in relevant part:

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 prescribed in subsection (j) of this section.

W. Va. Code § 6B-2-5(d)(4) states, in relevant part:

Where the provisions of subdivisions (1) and (2) of this subsection 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 state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written

application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

Opinion

Prohibited Contract

The Ethics Act prohibits a public official from having more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control unless his or her governing body seeks, and receives, an exemption to contract with the public official. W. Va. Code § 6B-2-5(d). For purposes of this provision, a “limited interest” is defined as an interest which does not exceed \$1,000 in the profits or benefits of the contract or contracts in a calendar year. W. Va. Code § 6B-2-5(d)(2)(A).

The Town of Fairview seeks an exemption to contract with two Council members for labor, and each has a financial interest in their respective contracts with the Town as both have the requisite authority or control over the Town’s contracts to implicate W. Va. Code § 6B-2-5(d).

Contract Exemption

The Ethics Commission may grant an exemption from the prohibition in W. Va. Code § 6B-2-5(d)(1) if the prohibition would result in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency.

The Ethics Commission notes that the Town does not need a Contract Exemption to contract with Council members Pyles or Knotts if the amount paid to each by the Town for their contract services during the calendar year does not exceed \$1,000.

Based upon the facts presented, the Ethics Commission finds that prohibiting the Town of Fairview from contracting with Pyles and Knotts on a temporary basis would result in undue hardship to the Town.

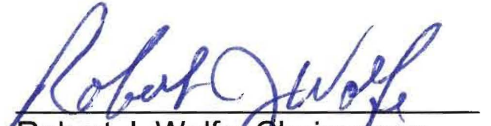
The Ethics Commission finds that the Town of Fairview may contract with Council member Don Pyles to perform work for the Water Department at the rate of \$8.75 per hour in an amount not to exceed \$2,000 in the 2020 calendar year.

The Ethics Commission finds that the Town of Fairview may contract with Council member Johnny Knotts to perform work for the Street Department at the rate of \$8.75 per hour in an amount not to exceed \$2,000 in the 2020 calendar year.

If the Town wants to continue contracting with Pyles or Knotts and to pay them more than \$2,000 each, then the Town must obtain another Contract Exemption from the Ethics Commission. In its Contract Exemption request, the Town must again demonstrate that it undertook meaningful efforts to find persons other than Town officials to perform the work. For example, the Town must show that it advertised the positions in a manner which reasonably placed persons within a reasonable driving distance of the Town on notice

that contract positions with the Town were available. The Town must also provide information concerning the anticipated duration of the contracts with Pyles and Knotts.

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