

Contract Exemption 2020-02

Issued on January 2, 2020, by

The West Virginia Ethics Commission

Opinion Sought

The **Town of Fairview** seeks an exemption to continue leasing a building from Town Council member Johnny Knotts while repairs are being made to Town Hall.

Facts Relied Upon By the Commission

The Town of Fairview states that, due to health hazards in Town Hall, it has temporarily relocated the Town's offices to a building across the street. The Town is leasing the temporary space from Johnny Knotts, a Town Council member. Knotts recused himself from discussions and votes involving the lease.

The Town states that Town Hall has hazardous environmental conditions due to chemicals sprayed in the building to combat pest infestation. Two Town employees have sought medical treatment from their exposure to the chemicals, and the Town does not want to expose citizens or its employees to the hazardous building conditions.

The Town is attempting to obtain money to restore Town Hall and the anticipated expenses are significant. Necessary repairs include fixing a drainage problem, cleaning or replacing the duct work, water damage remediation and restoration work, and carpet replacement. The Town Hall also may need a new furnace.

The Town states it chose to lease Johnny Knotts' building because it, like Town Hall, is in the center of the community and accessible to citizens. The Town further states that there is no other comparable, available space to lease within a two-block radius of Town Hall.

The monthly lease amount is \$300, and the Town pays the utility bills, insurance, taxes and maintenance expenses for the leased building. The Town does not know how long it will need to lease Knotts' building because it does not know how long it will take to obtain the necessary funding for the repairs and to have them completed.

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

The Ethics Act prohibits a city official, including a city council member, 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 him or her. 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 public contract or contracts in a calendar year. W. Va. Code § 6B-2-5(d)(2)(A).

As City Council member Knotts exercises authority or control over the Town of Fairview's contracts, and as the anticipated contract amount is in excess of \$1,000, the Town must obtain a Contract Exemption to continue leasing the building from Council member Knotts.


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.

Based upon the facts presented, the Ethics Commission finds that it would result in undue hardship or other substantial interference with the operations of the Town of Fairview to prohibit the Town from leasing the building from Council member Knotts.

The Ethics Commission finds, therefore, that the Town of Fairview may continue to temporarily lease the building from Council member Knotts pursuant to the terms of the current lease, \$300 per month with the Town paying for utilities, insurance, taxes and maintenance. The Town may not, however, make any capital improvements to the leased building. For example, the Town may not replace the roof or install a new heating or cooling system.

This Contract Exemption is effective until January 15, 2021. If the Town wants to continue to lease the building after that date and the lease will exceed the \$1,000 limited financial interest, then the Town must receive a new Contract Exemption in order to continue leasing the building from Council member Knotts.

The 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