

## **Contract Exemption 2020-03**

**Issued on March 5, 2020, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

The **City of Bridgeport Development Authority** seeks an exemption to sell real property to a company in which the Mayor is a member.

### **Facts Relied Upon By the Commission**

The Bridgeport Development Authority (“Authority”) owns an approximately three-acre undeveloped lot at the end of Marcellus Way in the Meadowbrook Industrial/Business Park. The property was purchased by the City of Bridgeport in 2011 and conveyed to the Authority in 2014. The property has not been significantly improved since the purchase. The property is abutted by a creek and by property owned by Energy Plaza Partners, LLC. The property is also within a floodplain requiring compliance with FEMA flood control regulations for development. Due to the foregoing, the Authority states that the property is of little value to it because it is not possible to develop the property for City purposes. The Authority states that developing the property would require any structures to be elevated above the floodplain.

Public notices were placed in the local newspaper on October 4 and October 11, 2019, advising that the Authority was accepting sealed bids for the purchase of the property for the purpose of potential development. The deadline to submit a bid was November 4, 2019. The notice also indicated that the appraisal of the property was available upon request. The property’s fair market value was appraised at \$150,000.

The Authority received one sealed bid. The bid was from Energy Plaza Partners in the amount of \$150,000.

The Mayor of Bridgeport has a 50 percent membership interest in Energy Plaza Partners. The Mayor also serves as a voting member of the Authority. The Authority states that the Mayor has recused himself from all decisions regarding the property, including seeking the instant Contract Exemption.

The Authority states that prohibiting it from selling the property to Energy Plaza Partners will result in excessive cost, undue hardship, or other substantial interference with its operations because it is not possible for the Authority to develop the property given its location within the floodplain. Furthermore, the bid from Energy Plaza Partners was the only bid received to purchase the property. The Authority states that the property is of little value to anyone other than Energy Plaza Partners. The Authority also states that the prohibition will deprive it of the offered purchase price of \$150,000 which could be

used to acquire property in a more advantageous location, assist in economic development or provide incentives to businesses wanting to locate or expand in Bridgeport.

**Provisions Relied Upon By the Commission**

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

In addition to the provisions of §61-10-15 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;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than \$5,000.

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.

W. Va. Code R. § 158-8-2 states:

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.

W. Va. Code R. § 158-8-4 states, in relevant part:

Public officials or public employees or members of their immediate family are considered to be “associated” with a business if they or their immediate family member are a director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

### **Opinion**

The Ethics Act prohibits a city official, or a business with which the official is associated, 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 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 public contract or contracts in a calendar year. W. Va. Code § 6B-2-5(d)(2)(A).

The Authority desires to contract to sell property to Energy Plaza Partners, LLC, a company in which the Mayor has a 50 percent membership interest. The Mayor’s membership interest in Energy Plaza Partners gives him more than a limited financial interest in the Authority’s contract to sell property appraised at \$150,000. W. Va. Code R. § 158-8-4 (public officials are associated with a business if they are a director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class). The Mayor also has the requisite authority and control over the contracts of the Authority because the Mayor serves as a voting member of the Authority. The contract is thus prohibited by W. Va. Code § 6B-2-5(d)(1).

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 prohibiting the Authority from selling the property to Energy Plaza Partners would result in undue hardship or other substantial interference with the operations of the Authority. The

property is in a floodplain; it is surrounded by property owned by Energy Plaza Partners; the only bid the Authority received to purchase the property was from Energy Plaza Partners; and the bid met the appraised value of the property. Prohibiting the Authority from selling the property would require the Authority to both retain property it does not wish to develop and forego the opportunity to sell the property at fair market value.

**The Ethics Commission therefore finds that the Bridgeport Development Authority may contract to sell the above-mentioned property to Energy Plaza Partners.**

**The Ethics Commission also reminds the Authority that the Mayor may not make, participate in making, or in any way attempt to use his office to influence a government decision affecting his financial interest in Energy Plaza Partners, including decisions regarding the above-mentioned property. W. Va. Code § 6B-2-5(d)(3).**

*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