

Contract Exemption 2023-01

Issued on February 2, 2023, by

The West Virginia Ethics Commission

Opinion Sought

The **Preston County Economic Development Authority** seeks a Contract Exemption to buy signs for its new office from Affordable Signs Unlimited LLC, a business owned by the spouse of Chris Stone, an Economic Development Authority board member.

Facts Relied Upon By the Commission

The Preston County Economic Development Authority (“EDA”) needs signs for its new office located in the Kingwood Shopping Center, at 157 Plaza Court, in Kingwood, West Virginia. The EDA subleases space to the Preston County Chamber of Commerce and the Preston County Farmland Protection Board, so the signage will identify those entities’ names and logos as well as the EDA’s.

The Preston County Chamber of Commerce (“Chamber”) prefers to support Chamber members. There are only two sign companies that are members of the Chamber. The first is Affordable Signs Unlimited LLC (“Affordable Signs”), the only sign business located in Preston County. It is owned by Beth Stone, the spouse of EDA member Chris Stone. The other sign company is Direct Results DSP, Inc., (“Direct Results”), a company located in Waynesburg, Pennsylvania. The EDA tries to support local businesses whenever possible and would prefer to do business with a Preston County, West Virginia, business rather than a Pennsylvania business if possible.

The Requester recognized that the EDA may not be permitted to contract with a company owned by an EDA member’s spouse. Therefore, the EDA first contacted Direct Results for a quote for signs. The EDA sought advice and assistance from Direct Results to determine the sizes and types of signs to choose at an affordable cost. Direct Results submitted a bid proposed to the EDA of \$23,333 for the following signage, including installation: one 60" x 36" interior sign above the building’s front entrance door, four exterior 20" x 60" x 6.5" signs for the outside entrance to the mall, and one 72" x 72" x 4" street sign for the entrance to the shopping center. The EDA found the quoted price to be excessive and questioned whether all the features being recommended by Direct Results were necessary.

Due to the excessive price of the quote, the EDA placed an advertisement for requests for proposals using the same specifications provided by Direct Results in the two Preston County local newspapers. The advertisement ran in the Preston County News on November 18, 2022, and in the Preston County Journal on November 29, 2022. The proposals were due for submission by December 16, 2022, and were to include the

design, build, and installation of the signs. The Requester received no responses to the request for proposals.

Next, the Requester directly contacted Affordable Signs to seek a quote. Affordable Signs is owned by Beth Stone, the spouse of EDA member Chris Stone. Chris Stone has not participated as an EDA member in any issues concerning the procurement of the new signs. The Requester asserts that Mr. Stone has not participated in the review or evaluation of the contract; has been recused from deciding, evaluating, and voting on the contract, and has fully disclosed the extent of his interest in the contract.

Affordable Signs suggested less expensive signs with fewer features and submitted a written quote in the amount of \$3,250. The Requester determined that the signs offered by Affordable Signs met the EDA's needs and that some of the features of the signs offered by Direct Results were unnecessary.

Finally, the Requester went back to Direct Results and asked for a new quote based on the sign specifications given by Affordable Signs. The new quote from Direct Results is in the amount of \$2,700.

The Requester recognizes that, in the end, Direct Results' quote is \$550 less than Affordable Signs' quote. The EDA asserts, however, that it would still prefer to use Affordable Signs because it is a local company. The EDA also questions the practices of Direct Results since it was able to reduce its cost by roughly \$20,000 by making a few simple changes. The EDA also has some concerns that this company might come back with increased costs after an agreement is signed due to "unforeseen circumstances." The EDA sought advice and assistance from Direct Results to determine the sizes and types of signs to choose at an affordable cost. The EDA is not pleased with the guidance and advice given by Direct Results.

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.... Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official 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 thereof, has been recused from

deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

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 § 61-10-15(a) states, in pertinent part:

It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or 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, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control. . . .

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

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.

Opinion

Prohibited Contract

The Ethics Act prohibits a public employee or official from having more than a limited interest¹ in the profits or benefits of a public contract over which he or she has direct authority or control. A member of an Economic Development Authority has direct authority or control over the contracts of the EDA. Advisory Opinion [1995-09](#). The

¹ A limited interest is 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).

prohibition also applies to an official's spouse's financial interest in a contract. Advisory Opinion [2002-11](#).

The Act contains an exception, at W. Va. Code § 6B-2-5(d)(1), however, that permits part-time appointed board members of a public agency, such as EDA members, to have contracts with their public agency when the member has not participated in the review or evaluation of the contract, has been recused from deciding, evaluating, and voting on the contract, and has fully disclosed the extent of his or her interest in the contract. Advisory Opinion [1995-09](#). According to the Requester, EDA member Chris Stone has satisfied these conditions. Therefore, under the Ethics Act, the EDA may contract with Affordable Signs.

A county EDA member, however, must also abide by the stricter prohibitions contained in W. Va. Code § 61-10-15(a), a statute that imposes criminal penalties against a county official who has a pecuniary interest, either directly or indirectly, in the proceeds of a contract over which the official exercises voice, influence, or control. (See Advisory Opinions 1995-09 and 2000-36, above, in which the Commission held implicitly that EDA members are county officials covered by W. Va. Code § 61-10-15(a).) Unlike the Ethics Act, this criminal provision does not contain an exception for part-time appointed public officials.²

Here, Chris Stone, as the spouse of Beth Stone, the owner of Affordable Signs, has a pecuniary interest in the EDA's contract for signs for purposes of W. Va. Code § 61-10-15. Further, as an EDA member, he exercises voice, influence, or control over the EDA's contracts for signs. Accordingly, the EDA may not accept the bid offer made by Affordable Signs unless the Commission grants this exemption request.


Contract Exemption

The Ethics Commission may only grant a contract exemption from the prohibitions in W. Va. Code § 61-10-15(a) if the prohibition results in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency. Here, the EDA asserts that it prefers to use a local West Virginia business and questions the practices of the out-of-state business, as discussed above. However, the bid proposal from Direct Results DSP, Inc., is \$2,700, and the bid from Affordable Signs is \$3,250. Affordable Signs is not the lowest bidder. The Commission has not granted a past contract exemption on these grounds. The Commission finds that the Requester has not met its burden of showing that excessive cost, undue hardship, or other substantial interference with the operation the EDA would result if the EDA awards the contract to Direct Results.

² The statute does contain a de minimis exception which was applicable in Advisory Opinion 1995-09.

Therefore, the Ethics Commission denies the Preston County Development Authority's request for a Contract Exemption.

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