

Contract Exemption 2023-02

Issued on March 2, 2023, by

The West Virginia Ethics Commission

Opinion Sought

The **Monroe County Commission** seeks a Contract Exemption to purchase fuel for county vehicles from Main Street Exxon, a business owned by County Commissioner Kevin Galford.

Facts Relied Upon By the Commission

The Monroe County Commission has a fleet of 11 active vehicles consisting of eight law enforcement cruisers, two emergency service vehicles, and one Assessor's Office vehicle.¹ The Requester states that historically the County has used various fuel vendors² throughout the County on a rotating basis. At times, however, County officials or employees ("employees") need to refuel vehicles in Union, West Virginia, where the County offices are located and the majority of its vehicles are kept. In the past, when vehicles needed to be refueled in Union, employees used a fuel station that was located in Union but closed in December 2022. The only other fuel station in Union is the Main Street Exxon ("Exxon"), which is owned by County Commissioner Kevin Galford. Since the other fuel station closed in December 2022, the County has been taking its vehicles that need refueling at or near Union to a Citgo Station in Pickaway, West Virginia, which is an 8.2 mile round trip from Union. The Exxon is only 486 feet from the Courthouse in Union.

The Requester seeks an exemption to purchase fuel for county vehicles at Commissioner Galford's Exxon station when time and circumstances require it. The Requester states that the most likely circumstance requiring a county employee to buy fuel at the Exxon would be when a vehicle needs refueled before leaving Union. The Requester states that if the exemption is granted, it would continue its practice of using fuel vendors on a rotating basis throughout the County for vehicles that do not need to be refueled in Union.

The Requester states that it averages \$744 per week (\$38,688 per year) in fuel costs for all of its vehicles. It estimates that the County would spend approximately \$92 per week (\$400.00 per month) at the Exxon if it is authorized by this Contract Exemption to buy fuel there. The Requester estimates that County employees would need to purchase fuel at the Exxon station for the 911 truck once per month; the 911/Mapping Jeep once every other month; the Assessor's Jeep once a month, and the Chief

¹ In addition, there are two out-of-service cruisers and two spare cruisers.

² There is one fuel vendor in the County that it does not use because the vendor does not accept the county P-Card.

Deputy's assigned cruiser once a week. The Chief Deputy normally works in the office in Union and is rarely out in the County in his cruiser during the week. The Chief Deputy is on call during the weekends, so he may need to refuel his vehicle before he takes the vehicle home on Fridays.³

The Requester states that traveling to Pickaway to purchase fuel for vehicles at times results in excessive cost and undue hardship. Specifically, the Requester states that the additional travel exposes employees to heightened traffic accident vulnerability and increases the County's fuel and vehicle maintenance expenses.

The current average cost of gasoline in West Virginia as of February 15, 2023, is \$3.34 per gallon.⁴ The tank size of each vehicle is as follows: the cruisers have 35 gallon tanks, the 911 truck has a 37 gallon tank, the 911/mapping Jeep has a 29 gallon tank, and the Assessor's Jeep has a 29 gallon tank. The average monthly cost for refueling the 911 truck, 911/mapping jeep, the Assessor's Jeep, and one cruiser is \$784.90.

The Requester states that it would not use the Exxon for vehicle maintenance. There is a maintenance garage near Union that does maintenance work on the County vehicles.

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.

³ The Requester states that three cruisers are stationed in the southern end of the County, so it is unlikely that County employees would need to use the Exxon to refuel them. In addition, the Assessor's Office vehicle and remaining cruisers travel throughout the County, and it is also unlikely the employees will need to refuel them at the Exxon.

⁴ This information was obtained from AAA Gas Prices. <https://gasprices.aaa.com/?state=WV>. The AAA website is used by the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy as an external link for consumers to obtain additional fuel economy information. <https://www.fueleconomy.gov/feg/gasprices/states/WV.shtml>.

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.

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 public officials 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 contracts in a calendar year. W. Va. Code § 6B-2-5(d)(2)(A). A County Commissioner has direct authority or control over county contracts. [Advisory Opinion 2017-02](#).

A county commissioner must also abide by the stricter prohibitions 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.

Here, Kevin Galford, the owner of the Exxon station, has a pecuniary interest in the purchase of fuel from the Exxon station by the County for purposes of both W. Va. Code § 6B-2-5(d) and W. Va. Code § 61-10-15. Further, as County Commissioner, he exercises direct authority or voice, influence, or control over the purchase of fuel for county vehicles. Accordingly, the County may not purchase fuel at the Exxon 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 § 6B-2-5(d) and 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 Monroe County Commission asserts that the additional travel to Pickaway, West Virginia, exposes employees to heightened traffic accident vulnerability and increases the County’s fuel and vehicle maintenance expenses. The Ethics Commission has previously found that requiring public agencies to travel farther to purchase supplies could result in undue hardship, excessive cost, and substantial interference with governmental operations due to increased fuel and

vehicle maintenance expenses, and liability exposure. See [Contract Exemption 2018-07](#); [Contract Exemption 2016-01](#); [Contract Exemption 2008-06](#); and [Contract Exemption 2007-04](#). These prior Ethics Commission findings relied, however, on additional round trip travel times of approximately one hour. Here, the additional round trip travel time would be approximately 12 minutes per trip.

Although the Requester's round trip travel is considerably less than the travel in the cited Contract Exemptions, in this instance there will be emergency and law enforcement vehicles that need refueling in Union before they can be driven safely out of Union. The Ethics Commission finds that it would create an undue hardship on the County to bar it from purchasing fuel for these vehicles at the only gas station located in Union, particularly when there are harsh weather conditions or other unforeseen circumstances. Hence, the Commission finds that prohibiting the County from purchasing fuel for emergency and law enforcement vehicles at the Exxon would also cause substantial interference with governmental operations. This finding is consistent with [Contract Exemption 2022-03](#) (allowing a county to use a towing company owned by a county commissioner to tow its emergency vehicles).

Therefore, the Ethics Commission holds that the Monroe County Commission may contract with Main Street Exxon for fuel purchases with the following limitations:

First, the total combined fuel purchases from Exxon may not exceed \$4,800 for a one-year period beginning on March 2, 2023, and ending on March 2, 2024. This amount is based on the County's estimated costs for refueling County vehicles at the Exxon.⁵

Second, this Contract Exemption will cease to be in effect if and when another fuel station opens in Union, West Virginia.

Third, fuel may only be purchased from Exxon for emergency and law enforcement vehicles. Other county vehicles may only purchase fuel from Exxon in an emergency situation. Commissioner Galford may not attempt to influence county employees or officials to make fuel purchases from his business.

Fourth, Commissioner Galford must recuse himself from decisions, discussions, and votes relating to the County purchases at or payments to the Exxon. For recusal to be proper, Commissioner Galford must first fully disclose on the record his disqualifying interest, and then he must leave the room during the discussion, deliberation, and vote on the matter. In addition, the minutes or record of the meeting must reflect the basis for the recusal and that he left the

⁵ The County's estimated monthly costs for refueling at the Exxon, \$400, is less than the estimated amount for refueling the vehicles based upon the current average cost of gasoline in West Virginia as of February 15, 2023, multiplied by the county vehicle fuel tank sizes and estimated number of times the vehicles would be refueled at the Exxon. Nevertheless, the Commission finds that granting an exemption based upon the County's estimate of \$400 per month is a fair approach.

room during all consideration, discussion, and vote on the item under consideration. W. Va. Code § 6B-2-5(j)(3).

This Contract Exemption is effective until March 2, 2024, or until such time as another fuel station opens in Union, West Virginia.

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