

Contract Exemption 2024-03

Issued on July 11, 2024, by

The West Virginia Ethics Commission

Opinion Sought

The **Kanawha County Parks and Recreation Commission** requests a contract exemption to continue contracting with Bailey & Wyant PLLC, a law firm in which Kanawha County Commissioner Marc Slotnick has a financial interest.

Facts Relied Upon By the Commission

On May 24, 2024, the Kanawha County Commission appointed Marc Slotnick to fill a vacancy on the County Commission. Marc Slotnick is an equity member in the law firm Bailey & Slotnick PLLC (“Bailey & Slotnick”), an entity that is a member of the law firm Bailey & Wyant PLLC (“Bailey & Wyant”). Mr. Slotnick’s term of office as a county commissioner will expire on December 31, 2024. Mr. Slotnick is not a candidate for this office in the 2024 general election and is, therefore, only serving in this position until the voters elect a new commissioner.

The Kanawha County Parks and Recreation Commission (“Parks Commission”) requests a contract exemption to continue using Bailey & Wyant for legal services for the limited period that Mr. Slotnick will be a Kanawha County Commissioner. The Parks Commission states it has contracted with Bailey & Wyant for approximately 20 years for legal services. Bailey & Wyant advises the Parks Commission on its day-to-day operations; acts as local counsel for litigation; and attends the Parks Commission’s monthly commission meetings. Other partners or associates at Bailey & Wyant, not Marc Slotnick, provide legal services to the Parks Commission. Moreover, the Parks Commission contracts with and pays Bailey & Wyant, not its member Bailey & Slotnick, for legal services.

The Parks Commission states that it will suffer undue hardship if it cannot use Bailey & Wyant for the approximate six-month period that Marc Slotnick will be serving as a Kanawha County Commissioner because of Bailey & Wyant’s expertise in providing legal counsel to the Parks Commission. Further, Bailey & Wyant is helping the Parks Commission to manage a pending lawsuit against the Parks Commission by overseeing outside counsel and assisting in responding to discovery requests. The Parks Commission asserts that it would create a hardship to hire and retain a new law firm for the short period of time that Slotnick will be serving as a County Commissioner and could undermine its ability to effectively manage the pending litigation against the Parks Commission.

The Parks Commission is requesting this exemption because of the financial relationship between Marc Slotnick, Bailey & Slotnick, and Bailey & Wyant. Further, the Kanawha County Commission appoints the Park Commission board members and provides funding to it, in an amount that exceeds seven percent of the Parks

Commission's budget. The County Commission does not approve the Parks Commission's legal invoices but approves its budget. If any matters come before the County Commission relating to the payment of invoices for legal services provided to the Parks Commission by Bailey & Wyant, then Mr. Slotnick will recuse himself from voting or taking any other action regarding such matters.

The Parks Commission is requesting an exemption to contract with Bailey & Wyant until January 1, 2025, or the date on which the new county commissioner, elected in the November 5, 2024, general election, is sworn in, whichever is sooner.

Provisions Relied Upon By the Commission

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

[N]o 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 § 61-10-15](#) states, in relevant part:

(a) 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

(h) 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 contracts

County officers, such as county commissioners, must abide by the 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.

Mr. Slotnick has a financial interest in contracts between Bailey & Wyant and the Parks Commission because Mr. Slotnick is an equity member in Bailey & Slotnick, and that legal entity is a member of Bailey & Wyant. As a county commissioner, Mark Slotnick has the requisite voice, influence, and control over the contracts of the County Commission and County agencies, including the Parks Commission, under W. Va. Code § 61-10-15. See [Advisory Opinion 2017-02](#) (A county commissioner’s company may not become a subcontractor for supplies and materials for county parks and recreation commission and public service district projects because the county commission appointed the parks commission’s board members.) The Commission also held in [Advisory Opinion 2023-12](#) that a county commission’s appropriations to another public agency constitute the exercise of voice, influence, or control if the appropriation is seven percent or more of the other agency’s budget.¹

Accordingly, W. Va. Code § 61-10-15 would prohibit Bailey & Wyant from being paid to represent the Parks Commission for the period that Marc Slotnick would serve as a County Commissioner unless the Ethics Commission grants a contract exemption. The Ethics Commission may grant an exemption from the prohibitions in W. Va. Code § 61-10-15 if it finds that the prohibition would result in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency. In [Advisory Opinion 1989-129](#), the Ethics Commission granted an exemption to a board of education to continue its 15-year contract for legal services with a board employee’s spouse.² The Commission stated:

Through his representation of the County Board of Education the attorney has developed an expertise with regard to matters associated with the school system in general and the County Board of Education in particular. If the exemption is not granted the Board would have to go outside the County and obtain legal counsel from another area, which would increase the cost of legal representation to the Board. There are currently an excess of forty separate pending cases concerning the County Board of EducationThe Commission finds that excessive cost, undue hardship and substantial interference would result from the enforcement of subsection (d)(1). . . .

The Commission finds the reasoning in Advisory Opinion 1989-129 to be sound and grounds for granting a contract exemption in the instant case. The Parks Commission states that Bailey & Wyant has represented the Parks Commission for approximately 20 years and attends its monthly meetings to provide oversight and give legal advice.

¹ The Ethics Act is not implicated in the case because of its lower standard of “direct authority” or “control.” In [Advisory Opinion 1995-24](#), the Ethics Commission held that a county commissioner does not have a prohibited interest in a sheriff’s department’s contracts under the lower standard in the Ethics Act public contract provision, W. Va. Code § 6B-2-5(d). [Advisory Opinion 2011-02](#) discusses the distinction.

² This exemption was granted under the Ethics Act and not W. Va. Code § 61-10-15(h). This distinction, however, is immaterial.

Bailey & Wyant is also currently overseeing a pending lawsuit against the Parks Commission. Moreover, the situation is unique as Marc Slotnick is only serving as a County Commissioner for a short period of time until a new county commissioner is elected and sworn into office. For similar reasons, the Ethics Commission granted a contract exemption to the Kanawha County Sheriff's Department to allow it to continue using Bailey & Wyant for legal services for the approximately six-month period that Marc Slotnick will serve as a county commissioner. Contract Exemption 2024-02.

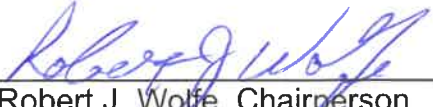
Based upon the factors presented and applicable law, the Ethics Commission finds that it would create an undue hardship on the operation of the Parks Commission for it to discontinue using the services of Bailey & Wyant during the limited period that Marc Slotnick will serve as a County Commissioner. Therefore, the Commission grants the contract exemption with the below limitations.

First, the contract exemption will expire on December 31, 2024, or when the successful candidate following the November 5, 2024, election is sworn in as a Kanawha County Commissioner, whichever is sooner.

Second, Mr. Slotnick must recuse himself from decisions, discussions, and votes, if any, relating to the Parks' Commission's contracts with or payments to Bailey & Wyant. See W. Va. Code § 6B-2-5(j)(3). For recusal to be proper, he must first fully disclose on the record his disqualifying interest and 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 Mr. Slotnick left the room during all consideration, discussion, and vote on the contract and payment for services.

Third, this exemption only allows other members and employees of Bailey & Wyant, not Mr. Slotnick, to provide legal services to the Parks Commission.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

³ Mr. Slotnick may, however, provide free legal services to the Parks Commission.