

Contract Exemption 2026-02

Issued on January 8, 2026, by

The West Virginia Ethics Commission

Opinion Sought

The **Snowshoe Resort Community District** requests a second contract exemption to lease office space from [First Tracts Real Estate, LLC](#), ("Fast Tracts"), a business that David Simmons, a District Board member, co-owns.

Facts Relied Upon By the Commission

The Pocahontas County Commission created Snowshoe Resort Community District ("District"), a public corporation, pursuant to the WV Resort Area District Act, [W. Va. Code §§ 7-25-1 through 27](#). The Requester asserts:

The District provides infrastructure and essential services within its boundaries. The interests of all real property owners, whether it's undeveloped land, private homes, private apartments, or commercial property -- other than the profit-making operations of the resort operator, are of concern to the District as it seeks to meet its goals of developing the area. The District is similar to a small city that contains within its footprint the Snowshoe Ski Resort ("Resort"). The Resort is owned by [Snowshoe Mountain, Inc.](#)¹, whose parent company is Alterra Mountain Company. The interests of the Resort are distinct from the District but align in providing a safe and thriving area that is attractive for guests and residents.

The District is governed by a seven-member board of directors who represent the Resort and the property owners in the district. W. Va. Code § 7-25-10. The District board members are elected by the district property owners. *Id.* The Board employs a manager and three rangers.

According to the Requester:

Due to the rural location of the District in Pocahontas County and the mountainous terrain, there is very little office space available either within or without the District or within five miles in all directions. The District has struggled to locate offices for the manager and a ranger that are secure and allow the District's business to be conducted....

¹ David Simmons is also a member of this board of directors.

The Requester asserts that it has used due diligence in attempting to find other suitable office space. Specifically:

The manager has reached out to all known potential landlords in the area including Snowshoe Resort, Silver Creek HOA, the other HOAs, The Shavers Fork Fire & Rescue and one other property owner along Cass Road. None of these owners have available space or are interested in renting to the District. Consequently, the proposed lease with First Tracts is the only viable alternative that will allow the District to conduct its business.

The Requester is requesting a second contract exemption to lease office space from First Tracts Real Estate, an entity in which Mr. Simmons is a co-owner. The Commission granted its first exemption in [C.E. 2023-04](#), for a two-year period. The new lease would be for another two years at the same monthly rate of \$2,200. The Requester explains the details of the space:

First Tracts owns much of the small amount of commercial space on Route 66, "Cass Road." Space in one of First Tracts' buildings became available in Fall 2023. As described in the first request for an exemption, the space is on the first floor, comprising approximately 1,350 square feet. The address is 502 Cass Road. The space would support four offices and a small conference room that adjoins one of the four offices. The space has two bathrooms. It is Wi-Fi-ready and has phone lines.

Since the grant of the [first] exemption and the Board's occupying the office space, the offices have been secured to meet the business needs of the District and the needs of the growing ranger department. There is parking. The Board and the manager have been able to meet in person and perform their obligations. The leasehold has functioned as anticipated. The rent proposed for the 2026-2027 term would remain the same, at \$2,200.00 a month and includes electric, propane, water, sewer, trash removal and snow removal [a major expense in Pocahontas county]....

The Board created a committee on November 17, 2023, to work on building its own facility and has made progress in that regard. A site has been selected and grant-funding obtained to assist with the design of the building and space utilization. Blueprints now exist. However, previously anticipated further grant funding has been affected by governmental decisions over which this Board has no authority. There is presently no date on when this project will move forward but work in anticipation of building continues....

Presently, there is no known available, alternative rental property to meet the needs of the District. As before, other than First Tracts, Snowshoe Resort, Inc. owns most of the commercial space that could be and has been used for District offices, but it has no availability.

The Requester asserts the following undue hardship:

In the case of the District's request for an exemption, the failure to grant the exemption will result in undue hardship including substantial interference with the ability of the District to conduct its business. Without the exemption the District suffers an undue hardship in having no secure and private space where the manager can do the business of the District including both financial matters and meeting with residents and vendors. The ranger department must secure property and interview people with reasonable confidentiality and, at present, is able to do so in the leased space. The Chief Ranger meets regularly with the Manager. If the exemption is not granted, there will be substantial interference with the ability of the District to meet its statutory obligations. The ranger department cannot function without adequate secure space. The Board and its manager have been able to do the business of the District in the leased space. Without the continued exemption, the District will have no physical presence in the community. The lease has worked well, and the District has been able to conduct its business and grow the ranger department. Finally, the District, in good faith, is seeking a permanent solution to the prohibition by developing its own building, though obtaining sufficient financing and the timing for completion is unknown.

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 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)(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, in pertinent part:

It is unlawful for any member of a county commission 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 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 official or employee and businesses with which he or she is associated from having more than a limited interest in the profits or benefits of a 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 or his or her associated business. W. Va. Code § 6B-2-5(d). Mr. Simmons, as co-owner of First Tracks, is associated with First Tracks and has more than a limited interest in the proposed lease. He also has direct authority or control over the District's contracts, and none of the exceptions in subsection (d) apply in this situation. In particular, the exception afforded to part-time board members does not apply to elected board members. See [Advisory Opinion 2013-25](#) (holding that elected conservation district officials have direct authority or control over landowner applications and are not entitled to the exception provided to part-time appointed board members in W. Va. Code § 6B-2-5(d)(1) because the conservation district officials are elected.)

Additionally, a county official must abide by the stricter prohibitions contained in W. Va. Code § 61-10-15, a separate criminal statute that imposes criminal penalties against county officials who are pecuniarily interested, either directly or indirectly, in the proceeds of a contract over which he or she exercises voice, influence, or control. A governing body may, however, seek an exemption from the Ethics Commission to contract with the official. W. Va. Code § 61-10-15(h). The Snowshoe Resort Community District was created by the Pocahontas County Commission. Whether the board members of a resort district are subject to W. Va. Code § 61-10-15 is unclear. For purposes of this Contract Exemption, however, the Ethics Commission need not decide the issue today².

Contract Exemption

The Ethics Commission may grant an exemption from the prohibitions in the Ethics Act and W. Va. Code § 61-10-15 if the prohibition would result in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency. The Commission accepts the Requester's asserted undue hardship above.

The Ethics Commission finds that the Snowshoe Resort District used due diligence in attempting to find suitable alternative office space and has asserted sufficient undue hardship and substantial interference with the District's operations. Therefore, the Ethics Commission grants this second Contract Exemption to permit the Snowshoe Resort District to lease office space from First Tracts Real Estate, LLC, a business with

² W. Va. Code § 61-10-15(h) sets the same standard for granting a contract exemption under the criminal statute as W. Va. Code § 6B-2-5(d)(4) in the Ethics Act. If it is later deemed that the board members of a resort district are subject to W. Va. Code § 61-10-15, then this contract exemption is meant to apply.

which David Simmons, a District board member, is associated for two years at a monthly rate of \$2,200.

The District may not, however, make any capital improvements to the leased building. For example, the District may not replace the roof or install a new heating or cooling system.

David Simmons must recuse himself from decisions, discussions, and votes relating to his contract and rental payments and services. He must follow the restrictions in W. Va. Code § 6B-2-5(j). 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. Simmons left the room during all consideration, discussion, and vote on the contract and payment for his services. W. Va. Code § 6B-2-5(j)(3).

This Contract Exemption is effective until January 30, 2028. The District must continue to use due diligence in securing alternative office space.

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.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission