

# **Contract Exemption 2026-03**

**Issued on January 8, 2026, by**

**The West Virginia Ethics Commission**

## **Opinion Sought**

The **Harrison County Solid Waste Authority** seeks a Contract Exemption to purchase property and buildings to establish a recycling center from Richard Barnett, the Executive Director of the Solid Waste Authority.

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

The Harrison County Solid Waste Authority (“SWA”) desires to purchase property for the establishment of a solid waste facility, pursuant to W. Va. Code § 22C-4-11. Until now, solid waste customers in Harrison County have used privately-owned facilities. Over the last three years, however, municipal customers have become dissatisfied with the existing services. To rectify this discontent, the Requester has decided to build its own facility to serve as an intermediary between the customers and a recycling processing center, which is privately owned and operated in Ohio.

The SWA asserts that it commenced an exhaustive search for suitable property to purchase for the new recycling center site.<sup>1</sup> The site needs to be large enough to accommodate large vehicles, accessible to the public, and located close to or within a municipality, but not within a residential area. The SWA searched for sites by physically viewing properties that had been advertised through real estate firms, home and land publications, and word-of-mouth referrals. Following the comprehensive search explained below, the SWA believes the only viable option is to purchase a site that is owned by the executive director of the SWA, Richard Barnett, a full-time county public employee.

First, the SWA considered its own building and three acres within the city limits of Clarksburg, but concluded the site is not suitable for a solid waste facility. The primary limitation of this site is that it is predominantly hillside, offering very little space suitable for construction. Furthermore, it has experienced hill slippages that required repairs on three occasions within the past 20 years. The long-term plan is to acquire more suitable property for handling recyclables and subsequently sell the current office building. The estimated value of the current building and property is \$300,000.

Second, the Chairman of the SWA identified two sites on Armory Road in Clarksburg. Both properties were priced at approximately \$1,000,000. The properties were not suitable because they were located near residential areas and were larger than necessary, which would result in increased maintenance expenses. Also, the structures

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<sup>1</sup> The SWA initially determined that leasing property was not a feasible option due to the anticipated high costs of improvements needed to make a leased property suitable for its requirements.

on these properties were aged and would require several hundred thousand dollars in updates, including new electrical systems and roofing.

Further, the executive director of the SWA located a potential site with plenty of acreage, which was a former salvage yard, in southern Harrison County, and is geographically isolated from residential areas. But, the executive director of the SWA and the listing agent determined that the existing structures were in disrepair, public sewage infrastructure was absent, and the asking price, though negotiable, commenced at \$1,000,000. Also, given its history as a salvage operation, the SWA is concerned about potential environmental contamination that could require costly remediation.

Following this, the executive director of the SWA asked the administrator of the County Commission about the potential sale of any County Commission-owned property. The SWA and the County administrator identified two properties that were being auctioned that met the SWA's established criteria. The first site was the former 911 center in Nutter Fort, WV, and it possessed adequate interior space for sorting and storing recyclable materials but lacked sufficient exterior property for high-volume truck traffic. The second property was near the airport in Bridgeport, but the asking price was too high.

Additionally, the SWA asked the two municipalities that had been most vocal regarding the current recycling situation to search within their own jurisdictions for suitable property. Neither municipality was able to identify an acceptable site.

Having ruled out all the other available options, the SWA is seeking a contract exemption allowing it to purchase property owned by its executive director, Richard Barnett. The SWA believes this property is perfect because it is located on around six acres and has a large storage building, a large two-story garage building (with offices), and a two-story office building. The property has all utilities and is fenced (with remote gate) to restrict access. The property is approximately ½ mile from the four-lane highway (U.S. Route 50) and is located in a non-residential section of Clarksburg. This is important because the SWA does not want to create any nuisance issues for homeowners. The property is easily accessible by tractor trailer and other large vehicles, which will be needed to transport the recyclables to and from the location.

The property was appraised in 2021, being valued at \$800,000. Since then, there have been improvements to the property in addition to the actual appreciation. There is not a current appraisal, and the SWA estimates that a current appraisal would value the property between \$1,200,000 and \$1,700,000. There have been no price negotiations between the SWA and Mr. Barnett. If this exemption request is granted, the SWA would like to make an offer up to the appraised value as determined by a current appraisal.

### **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....

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 county official or employee 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).<sup>2</sup>

Executive Director Barnett has “direct authority or control” over the SWA’s purchase of the property as intended by the Ethics Act based on [Advisory Opinion 2012-29](#), in which the Commission found that a county director of emergency services had the requisite authority or control over how the agency’s grant funds were spent for a mitigation project. In reaching this conclusion, the Commission noted that the Requester was involved in the approval and securing of the grant, even though the Requester had no formal voting authority on the County Commission. In fact, the County Commission had delegated the grant process to the Requester. See also [Advisory Opinion 2004-14](#). Therefore, the Ethics Act prohibits the SWA from purchasing property from its executive director unless the Commission grants this request for a contract exemption.

### **Contract Exemption**

The Ethics Commission may grant an exemption from the prohibitions in the Ethics Act if the prohibition would result in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency. Here, the SWA has been diligently searching for a suitable location for its recycling center for two and one half years. Based upon the facts asserted, the Ethics Commission finds that prohibiting the SWA from purchasing the property at a fair price from its executive director would result in undue hardship or other substantial interference with the operations of the SWA.

**The Ethics Commission, therefore, grants the Contract Exemption allowing the Requester to purchase the property under the following conditions:**

**First, the Harrison County Solid Waste Authority may not pay a price that exceeds a current property appraisal from a qualified appraiser for the subject property.**

**Second, Mr. Barnett must recuse himself from decisions, discussions, and votes relating to this contract.** He must follow the restrictions in W. Va. Code § 6B-2-5(j).

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<sup>2</sup> Additionally, a county official must abide by the stricter prohibitions contained in W. Va. Code § 61-10-15, which prohibits county officials who are pecuniarily interested, either directly or indirectly, in the proceeds of a public contract over which those officials exercise voice, influence or control. It is not clear to the Commission whether an executive director of an SWA is a “county official” for purposes of the statute. A county entity may, however, also seek an exemption from the Ethics Commission to contract with an official under this statute as well. W. Va. Code § 61-10-15(h). Therefore, as in Advisory Opinion 2012-29, we need not determine that issue today.

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. Barnett 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).

*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