

Contract Exemption 2018-04

Issued on September 6, 2018, by

The West Virginia Ethics Commission

Opinion Sought

The **Wyoming County Health Department** requests an extension of Contract Exemption 2016-02 to allow it to continue contracting with Family Healthcare Associates Inc.

Facts Relied Upon by the Commission

In 2014, the Ethics Commission granted the Wyoming County Health Department a Contract Exemption authorizing it to contract with Family Healthcare Associates Inc. ("Family Healthcare") for family planning, breast and cervical cancer screenings and other medical services. See Contract Exemption 2014-02. The Contract Exemption was for a period not to exceed two years. It was necessary for the Wyoming County Health Department ("Health Department") to obtain the Contract Exemption due to the financial relationship of a Board of Health member and the Department's Health Officer with Family Healthcare.

In 2016, the Health Department requested that the Ethics Commission extend the Contract Exemption. The Ethics Commission, based upon the facts presented, granted the Requester another Contract Exemption authorizing the Health Department to continue contracting with Family Healthcare for a period not to exceed two years. See Contract Exemption 2016-02.

In Contract Exemption 2016-02, the Commission ruled as follows:

At the expiration of two years, if the Board of Health seeks to continue contracting with Family Healthcare Associates, it must submit a new request for an exemption if its Board Members or Health Officer still have a financial relationship with the company. Prior to the Board of Health seeking to renew this contract exemption, it should submit written evidence that an attempt was made to obtain quotes from other providers in Wyoming County or nearby counties to ensure no other providers are willing and able to provide the same services at or around the current contract price.

The Wyoming County Health Department seeks an extension of Contract Exemption 2016-02 which expires on September 1, 2018.

The Requester states that it solicited bids for medical providers for its women's health programs through an advertisement in the hard copy of the Wyoming County Report, a weekly newspaper publication.

The Requester states that in response to the advertisement, the only letter of interest it received was from Family Healthcare, which quoted the Health Department the same rate which it is currently charging the Health Department - - \$45 per hour for services, including medical malpractice insurance coverage.

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 § 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 relevant part:

It is unlawful for 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 . . . , he or she may have any voice, influence or control

W. Va. Code § 61-10-15(h) states, in relevant 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.

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The Ethics Commission may grant an exemption to the public contract prohibitions in the Ethics Act and in a separate statute which governs certain county contracts, when application of the prohibitions would result in excessive cost, undue hardship or other substantial interference with the operation of the governmental body. W. Va. Code § 6B-2-5(d)(4) and W. Va. Code § 61-10-15(h).

In determining whether to grant a Contract Exemption, the Ethics Commission considers, among other things, whether there are businesses which do not have a prohibited interest in the public contract that are willing and able to perform the requested work at a price that is not excessive.

In the present case, the Wyoming County Health Department advertised for bids in The Wyoming County Report, a weekly publication of Beckley Newspapers, for medical providers to provide services for its women's health program. The Requester does not provide the circulation data for this media outlet. The Wyoming County Report has a website but advertisements in the paper edition are not published on the website – only in the hard edition.

The Commission is not confident that the method of advertising used placed a reasonable number of medical providers, either in Wyoming County or other counties, on notice that the Requester was seeking bids for medical service providers for its women's health program. Despite finding potential deficiencies with the method used by the Wyoming County Health Department to solicit bids, the Ethics Commission finds that denying the Contract Exemption will result in undue hardship to the Requester and substantial interference with the operation of its women's health program if it must immediately stop offering medical services through its women's health program due to the expiration of Contract Exemption 2016-02.

The Ethics Commission hereby grants the Wyoming County Health Department a short-term Contract Exemption for a period not to exceed six months to allow it to continue contracting with Family Healthcare Associates for medical services for its women's health program at the quoted rate of \$45.

If the Requester seeks to renew the Contract Exemption, it must demonstrate that it took meaningful efforts to obtain quotes or bids from other qualified medical providers which are willing and able to provide the needed services. If the Requester solicits quotes or bids via newspaper advertisement(s), it must demonstrate that the method of advertisement used was sufficient to place a

reasonable number of medical providers, in Wyoming County and the surrounding counties, on notice that the Requester is seeking quotes or bids for medical services.

The Ethics 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