

## Property Exemption No. 2018-01

Issued on September 6, 2018, by

The West Virginia Ethics Commission

### Exemption Sought

**Wood County Assessor David Nohe** requests an exemption to sell various pieces of property in Wood County.

### Facts Relied Upon by the Commission

The Requester is the Assessor of Wood County and has served in that position since January 1, 2017. He owns various pieces of property in Wood County which he wants to sell.

The Requester is unsure if potential buyer(s) may own real or personal property in Wood County which would be subject to annual tax assessments by his office. The Requester requests a Property Exemption out of an abundance of caution for purposes of complying with the Ethics Act's restriction governing the sale of property to regulated persons.

An overview of the properties and the Requester's reasons for seeking to sell the properties follows.

#### 2710 Grand Central Avenue, Vienna, West Virginia

The Requester inherited this property from his father in 2015. He currently leases the property to a business which operates a Hardee's® restaurant in the building. The lease was in effect at the time he inherited the property.

The lease expires on January 30, 2019, and the lessee states that it will not be renewing it. The Requester states that when the lease ends, he will have a negative cash flow on the property due to the loss of rental income and because he will be responsible for the maintenance costs and tax expenses which are currently being paid by the lessee.

He uses the income from this property, in part, to cover the costs of his mother's home and other necessities for her. From a financial standpoint, he believes his best option is to sell the property.

#### 2500 Grand Central Avenue, Vienna, West Virginia

The Requester also inherited this property from his father in 2015. A small shopping center is located on the property. The Requester also uses the income from the shopping center tenants to cover his mother's expenses.

The Requester states the shopping center needs a new roof. He states that due to the deterioration of the shopping center, he must either replace and remodel it, raze the building, or sell the property. He believes that his best option is to sell the property.

707 30<sup>th</sup> Street, Vienna, West Virginia

This property has a small garage and is located near the Hardee's restaurant and the shopping center. The Requester uses the garage to store maintenance equipment for the two properties. The Requester wants to sell the garage, either separately or as part of the Hardee's restaurant or shopping center property sale(s).

Sandalwood Place, Lot 3B, Vienna, West Virginia

The Requester owns an empty lot in Sandalwood Place, a residential neighborhood in Vienna. In 1992, while he was living in the neighborhood, he purchased a piece of property adjacent to the back of his former residence and other nearby homes. He subdivided the property into lots.

He kept one lot to extend his backyard and offered the remaining lots for sale to his neighbors for this same purpose. Eight of his nine neighbors to whom he made this offer opted to purchase a lot, but one did not.

The property owned by the neighbor who did not purchase the lot behind his home is going to be listed for sale soon. If the property is sold, and if the new owner wants to buy the adjacent lot for purposes of extending his or her backyard, then the Requester wants to be able to sell it for that purpose.

**Code Provisions Relied Upon by the Commission**

W. Va. Code § 6B-2-5(h) states, in relevant part:

(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding 12 months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

...

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

## **Analysis**

The Ethics Act, at W. Va. Code § 6B-2-5(h), restricts full-time public officials and employees from, among other things, buying and selling property to or from persons that they or their subordinates regulate. Pursuant to this Code provision, elected assessors are prohibited from “engaging in real estate transactions for commercial purposes, either through a business, or more informally by buying and selling property on the side.” Advisory Opinion 2013-55. *See also* Advisory Opinion 2011-14 (discussing the restrictions). The Ethics Commission may grant an exemption to persons adversely affected by the restrictions in W. Va. Code § 6B-2-5(h).

The Ethics Act does not contain a specific standard to apply in determining whether a public official will be adversely affected by the limitations in “h.” The term “adverse” is defined, in part, as “opposed to one’s interests’ or “causing harm.”<sup>1</sup>

**The Ethics Commission finds that the Requester will be adversely affected if he is prohibited from selling his various pieces of property.**

**The Ethics Commission grants the Requester an exemption to sell the following pieces of property subject to the limitations outlined below:**

- **2710 Grand Central Avenue, Vienna, West Virginia**
- **2500 Grand Central Avenue, Vienna, West Virginia**
- **707 30<sup>th</sup> Street, Vienna, West Virginia**
- **Sandalwood Place, Lot 3B, Vienna, West Virginia**

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<sup>1</sup>“Adverse.” Merriam-Webster.com. Accessed August 24, 2018. <https://www.merriam-webster.com/dictionary/adverse>.

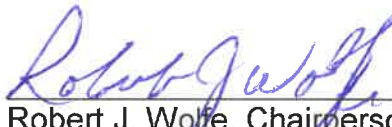
The limitations are:

(1) If the Requester, either directly or through an agent, communicates with potential buyers about any of the properties, and if the potential buyer(s) own(s) property in Wood County which is subject to assessment by his office, then he, in his capacity as the elected Assessor, may not be involved in any matters which uniquely affect the potential buyer(s). The Requester must delegate any such matters to his Chief Deputy or another Assessor's Office employee.

(2) If any of the properties are sold, he may not be involved in any matters affecting the buyer or the property for a six-month period following the close of the transaction.

(3) If any of the properties are sold while he is still serving as the elected Assessor, within 30 days of the completion of the sale, he must provide written notification of the sale and of the sale(s) price to the Executive Director of the Ethics Commission. If the buyer is a property owner in Wood County, the Requester must provide the name of the buyer and where he or she resides.

*The Commission notes that Property Exemptions must be granted on a case-by-case basis. Therefore, this Exemption is limited to the facts and circumstances of this particular case, and may not be relied upon as precedent by other persons.*

  
Robert J. Wolfe, Chairperson  
West Virginia Ethics Commission