Contract Exemption 2026-08

Issued on August 6, 2026, by

The West Virginia Ethics Commission

Opinion Sought

The **City of Montgomery** is requesting a contract exemption permitting it to sell a vacant lot at 1412 Fayette Pike W., Montgomery, West Virginia, to Roger D. Landers, a City council member.

Facts Relied Upon by the Commission

The City of Montgomery asserts that it acquired the property around 2008 as a donation from an owner seeking to avoid its upkeep. The property serves no current or foreseeable municipal purpose. The City also asserts the public would benefit from the sale of this property for many reasons. Presently, as the property is owned by the City, it generates no real estate tax revenue, municipal B&O tax revenue, municipal fees, or other recurring local revenue for the City. Instead, the property imposes costs and burdens on the City and the public. The City must maintain the lot, including mowing and related upkeep. The City must also pay for insurance on the vacant property and is subject to liability exposure related to the property. In addition, the lot has at times been used by others for unauthorized parking or storage of vehicles, requiring the City to monitor, control, and, when necessary, take enforcement action to remove vehicles or otherwise address unauthorized use of the property.

For these reasons, the City administration wants to sell the property, along with two other properties. The sale of the three properties was taken up by the City finance committee. Council member Landers was not a member of the finance committee and did not attend this meeting. The finance committee recommended minimum purchase prices for the three properties, which was agreed to by the Mayor and City Administrator.

The City asserts the sale and auction were conducted in compliance with state law, set forth in W. Va. Code § 8-12-18. As required by law, the City published a "Notice of Public Sale and Auction of Municipal Real Property," specifically identifying the three City-owned properties being offered for sale by sealed bid. The minimum bid listed in the notice for 1412 Fayette Pike W. was $2,500. The property was advertised "AS IS, WHERE-IS," with no warranties, express or implied, as to condition, title, zoning, or suitability for any particular purpose, and will be transferred by quitclaim deed. Council member Roger D. Landers submitted the only bid, offering to purchase the vacant lot for $3,500.

During the March 3, 2026, City Council meeting, the Mayor presented the issue of selling the properties at the proposed minimum prices set by the finance committee and administration. Responding to the Mayor's standard practice of asking the council body if a council member would make the motion, Council member Landers made the motion to sell the properties at the proposed minimum sales prices. Councilman Landers was not involved in putting together the proposal, did not have conversations with anyone about the proposal or the sale/purchase of any of the three properties prior to the March 3, 2026, meeting.

It was not until after the March 3, 2026, meeting that Mr. Landers closely looked at the property descriptions and noticed one of them was about ½ mile from his residence. He then decided to submit a bid to build a small garage and/or storage facility on the property for his personal use.

<u>Code Provisions Relied Upon by the Commission</u>

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

> (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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

> (1) In addition to the provisions of § 61-10-15 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:
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> …
>
> (3) 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 § 6B-2-5(j) states, in relevant part:

> (1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:
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> (A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks....

<u>Opinion</u>

Prohibited Contract

The Ethics Act prohibits a public official or business with which he or she is associated 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. W. Va. Code § 6B-2-5(d)(1). A city council member has direct authority or control over the sale of city property. Advisory Opinion 1995-35.

The Commission finds, therefore, the Ethics Act's prohibited contract provision, at W. Va. Code § 6B-2-5(d)(1), prohibits the sale of the property to Mr. Landers unless the Commission grants the City a contract exemption.

Contract Exemption

The Ethics Commission will now decide whether to grant a contract exemption to allow the City to sell the property to Mr. Landers in spite of the prohibition described above.

The City asserts the following facts to support its contention of undue hardship on its operations if this sale to Mr. Landers is not authorized: 1) Mr. Landers was the sole bidder and offered an amount above the minimum bid. 2) The lot is currently producing no revenue. 3) Retaining this property would also create multiple hardships for the City, including the expenses of maintenance, repairs, and liability insurance. 4) The vacant lot would create a nuisance.

The Ethics Commission recognizes that Council member Landers participated in the March 3, 2026, meeting, even making the motion to sell the three properties at proposed minimum prices. Furthermore, the Commission notes that a governing body's request for a contract exemption is not automatically defeated by prior participation in the matter, and finds no self-dealing in violation of W. Va. Code § 6B-2-5(b). See Contract Exemption 2024-05.

The Commission grants a contract exemption, pursuant to W. Va. Code § 6B-2-5(d)(4), to the City of Montgomery, based on the City's asserted hardship above, authorizing the sale of 1412 Fayette Pike W. Street, Montgomery, West Virginia, to Roger D. Landers, a City council member for $3,500. Council member

Landers must recuse himself from all additional matters concerning the City's sale of the property

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.

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