

## **Contract Exemption 2025-02**

**Issued on March 6, 2025, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

**Fairmont State University** is seeking a contract exemption to allow it to lease a helicopter for its rotary wing training program from a company owned by its assistant chief pilot, Jeremy Griffin.

### **Facts Relied Upon by the Commission**

The Requester asserts that Fairmont State University's Aviation Center is attempting to establish the first university rotary wing training program in West Virginia. The training program requires a helicopter. Fairmont State's assistant chief pilot, Jeremy Griffin, is the sole member of a company that owns a 1996 Schweizer S300 helicopter. The S300 is a light and economical training helicopter. Griffin purchased the helicopter in order to give private lessons outside of his state employment. Mr. Griffin did not buy the S300 for the purpose of leasing it to the Aviation Center. The Requester asserts that Mr. Griffin is one of the most qualified helicopter pilots in the Northeastern United States and presumably used his extensive knowledge and experience to select the S300 as the best overall training aircraft.

Joel Kirk is the director and chief instructor of the Aviation Center at Fairmont State. The Requester asserts that as an originator of an FAA-approved training school in West Virginia, Director Kirk is deeply tied into the aviation industry and community in the state and region. The concept of starting a helicopter program originated with Director Kirk approximately eight years ago. He considered other helicopter models, including models from Cabri, Robinson, and Enstrom, and he determined that the Schweizer S300 was the best, most cost-efficient solution. After learning that Mr. Griffin bought the S300, Director Kirk asked Mr. Griffin if the Aviation Center could lease the S300.

Mr. Griffin's company is willing to enter into a lease agreement with Fairmont State for the S300 at \$185 per hour<sup>1</sup>. Based on his own searches and knowledge of the industry, Director Kirk found no other current helicopter leasing option for flight training in West Virginia. Even if there was a comparable helicopter in the state, the industry standard provides that helicopter lessors require a minimum lease rate of 25-30 hours a month.

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<sup>1</sup>The Requester asserts that under the lease agreement, the only maintenance Fairmont State would be responsible to cover would be routine oil changes, lubrication, belts, and 100-hour inspections. Mr. Griffin's business would be responsible for all else, including but not limited to, repositioning equipment, annual inspections, avionics or airframe upgrades, main or tail rotor overhaul replacement or repair, required engine purchase, overhaul/rebuild as required, and any arising or existing maintenance required to comply with "Airworthiness Directives," "Service Bulletins," airframe issues, or recalls. The lease agreement does not include any other benefits for Mr. Griffin or his company.

Director Kirk anticipates that the Aviation Center will use about 16 hours a month. Therefore, the Requester would likely pay for flight time it would not use if it leased from another lessor. For comparison purposes, the Requester asserts that the nearest rotary wing training program is in Pittsburgh, and it utilizes a Robinson R44 helicopter, another light helicopter, at a cost of approximately \$800 per flight hour.

The Requester asserts that Mr. Griffin does not have direct authority to negotiate lease terms on behalf of Fairmont State University or the Aviation Center, but that he is contemplated to be the sole flight instructor for the helicopter training program. Therefore, Mr. Griffin will likely be involved in and have control over how often the helicopter will be utilized by students and when and where to have it maintained.

### **Code Provisions Relied Upon by the Commission**

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) ... 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. . . .

(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.

## **Opinion**

### *Prohibited Contract*

The Ethics Act prohibits a public official or employee or a business with which he or she is associated from having more than a limited interest, e.g., over \$1,000, 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).

Whether Mr. Griffin's position of assistant chief pilot and sole instructor in the helicopter training program has the requisite "control" over Fairmont State's lease agreement for a helicopter is not obvious on its face. The Ethics Commission held in [Advisory Opinion 1995-02](#) that a state supervisor may not have a contract for psychological services with his public employer because he had control over the contract due to his duty to monitor it. Finding such a contract was prohibited, the Commission stated:

In this instance, the requester would like to contract as a consulting psychologist to provide psychological services such as testing and evaluations, to a State Institution. He would provide these services during his off-duty hours or reschedule his regular work hours. However, the requester is also a full-time unit supervisor for this institution and his job responsibilities include overseeing the staff and ensuring that the procedures and instructions of the consulting psychologist are administered properly.

Pursuant to W. Va. Code § 6B-2-5(d)(1) a public employee may not have more than a limited interest in the profits or benefits of a public contract over which he may have direct authority or control. Although any contract for psychological services will be awarded and approved by the State Division in conjunction with the Acting Warden and Business Manager of the Institution, the Ethics Commission has previously held that an individual has control over a contract as contemplated by WV Code § 6B-2-5(d)(1) if he **oversees the administration of the contract or if he monitors or supervises the services provided under the contract. (emphasis added)**

The Commission finds that Mr. Griffin, like the psychologist in Advisory Opinion 1995-02, "oversees the administration of the [helicopter] contract" and "monitors or supervises the services provided under the contract." As such, the Commission finds that Mr. Griffin's position has the requisite degree of control over Fairmont State's lease

of the helicopter being used in the training program to render the contract prohibited under W. Va. Code § 6B-2-5(d)(1).

### *Contract Exemption*

The Ethics Commission will now decide whether to grant a contract exemption to allow Fairmont State University to lease a helicopter for its rotary winged training program from its assistant chief pilot's company, pursuant to W. Va. Code § 6B-2-5(d)(4), which states, "Where the provisions of. . . this subsection would result. . . in excessive cost, undue hardship, or other substantial interference with the operation of a state,. . . or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption. . . ."

Based upon the foregoing asserted facts, the Commission finds that failure to receive a contract exemption would result in excessive cost, undue hardship, and substantial interference with Fairmont State University's fixed wing training program. Denying the exemption would prohibit the training program from starting due to the lack of an alternative helicopter. Even if there was an available alternative helicopter, its costs would be excessive.

**Therefore, the Ethics Commission grants a contract exemption to Fairmont State University allowing it to lease the 1996 Schweitzer S300 helicopter from a company owned by Fairmont State's assistant chief pilot, Jeremy Griffin. The exemption is effective for two academic years at a rate of \$185 per hour and the other terms and conditions of the lease agreement that have been represented to the Commission.**

**This Contract Exemption is effective until June 31, 2027. Before requesting a subsequent contract exemption, the Requester must look for opportunities to lease a helicopter under terms and conditions that are comparable to, or more favorable to the Requester than, Mr. Griffin's lease. If at the expiration of this Exemption, the Requester is unable to do so, it may request another contract exemption.**

*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