

Contract Exemption 2025-01

Issued on March 6, 2025, by

The West Virginia Ethics Commission

Opinion Sought

The **Mineral County Sheriff and County Commission** are requesting a contract exemption allowing the Sheriff's Office to contract with RR Communications, a business owned and operated by Deputy Roger Reall.

Facts Relied Upon by the Commission

The Sheriff's Office needs to customize (or upfit) four new Chevrolet Tahoe trucks in order to use them as cruisers for law enforcement purposes. The Sheriff's Office bought the equipment necessary to customize the vehicles, including appropriate police lights, cameras, sirens, radios, and etc. The County Commission received three bids for the installation and 24/7 hour available servicing of the equipment as follows:

- East Coast Emergency Lighting, Inc.: \$14,400
- Timbrook Chevrolet: \$23,200 - no service
- RR Communications: \$12,800

The Requester asserts that the bid submitted by RR Communications, \$12,800, represents the most cost-effective option and that Deputy (Sgt.) Roger Reall, the owner of RR Communications, has extensive experience in police vehicle upfitting. As the sergeant in the department, Deputy Reall supervises nine other deputies. He is also in charge of maintaining the cruisers.

In his private time, often at his home, he upfits the Sheriff's Office's fleet. He installs radios, bumpers, and prisoner compartments, and etc. He holds an amateur radio technician license. He did this work initially as part of his deputy job duties. About 20 years ago, he began providing these services to the county during his spare time. The Sheriff states that using RR Communications provides the Sheriff's Office with 24-hour service availability since Deputy Reall is employed with the Sheriff's Office and he lives in Mineral County.

East Coast Emergency Lighting, Inc., provided the next lowest bid of \$14,400. However, the company does not provide immediate service for the equipment upon request. The company represented to the Sheriff that it could take three to four days to fill a service request the Sheriff's Office may place to the company's call-in line. This would cause a cruiser to be out of service during this delay. The Requesters have determined that using RR Communications is both financially and operationally the most prudent option.

The Requesters state that denying the ability to contract with RR Communications would result in excessive cost and undue hardship to the County Sheriff's Office for the following reasons: 1) It would cost the County an additional \$1,600; 2) The County would be deprived of Deputy Reall's extensive knowledge of the Sheriff's Office fleet and proven expertise in vehicle upfitting to ensure the highest quality of service, and 3) The County would not receive 24/7 service to deal with upfitting issues as they arise.

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.

(4) 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 states, in pertinent part:

(a) 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. . . [an] officer. . . , he or she may have any voice, influence or control. . . .

(h) 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

Both the Ethics Act, at W. Va. Code § 6B-2-5(d), and W. Va. Code § 61-10-15(a), a criminal misdemeanor statute, which applies to certain county officials and employees, prohibits public servants from being a party to, or having a financial interest in, a public contract over which their public positions give them varying degrees of control. The Ethics Commission must determine whether, based upon the limitations in these Code sections, the Sheriff's Office may contract for the installation and serving of equipment for cruisers from Deputy Reall's business. W. Va. Code § 61-10-15 is more restrictive than the Ethics Act in that it prohibits certain public officials at the county level from having a pecuniary interest in public contracts over which they have "voice, influence or control."¹

To determine whether Deputy Reall has the requisite level of control over the County's contract for these services for purposes of W. Va. Code § 61-10-15, the Ethics Commission will review its prior findings in similar contract exemptions requested by the Sheriff in Hardy County. In [Contract Exemption 2016-05](#), the Hardy County Sheriff asked to contract with a deputy sheriff's company to purchase lighting equipment for two county cruisers for \$900. The next lowest bidder was \$1,800. In that case, the Commission found that the deputy had control over the lighting contract:

In the present case, the Deputy is knowledgeable about the lighting equipment and he currently installs the equipment on the cruisers. He has acquired a general expertise in this area. Indeed, he has started a private business selling this equipment. Due to his expertise relating to the installation of lighting equipment on emergency services vehicles, and due to the fact that his work duties include the use of this expertise to install lighting equipment on the Sheriff's Office's cruisers, the Ethics Commission finds he exercises influence and control over the purchase of

¹ Deputy Sheriffs are subject to W. Va. Code § 61-10-15. [Advisory Opinion 2013-15](#).

emergency lighting equipment. Further, he may exercise influence over decisions by the office in regard to what constitutes a "fair price" for emergency lighting equipment. Therefore, the Commission finds for purposes of the application of W. Va. Code § 61-10-15 and related prohibitions that the Deputy exercises "influence" and "control" over the public contract in question, i.e., the purchase of emergency lighting equipment.

The Commission finds that Deputy Reall's circumstances and job duties are similar to those of the deputy in Contract Exemption 2016-05. Deputy Reall has extensive experience in police vehicle upfitting and maintenance, and he currently oversees the Sheriff's Office's fleet. **As such, Deputy Reall has the requisite voice, influence, or control over the Sheriff's Office's contract for the installation and servicing of the equipment.**²

Contract Exemption

The Ethics Commission will now decide whether to grant a contract exemption pursuant to W. Va. Code § 61-10-15(h) and 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. . . ."

The Commission will again look to the contract exemptions in Hardy County. In Contract Exemption 2016-05, the Commission granted the request because Hardy County would save \$900 by contracting with the deputy. In [Contract Exemption 2019-03](#), the Commission granted a second exemption to Hardy County to contract with the same deputy's business. This exemption was based on the fact that after advertising for bids, only the deputy's business provided a quote for services. The Commission found that hardship and substantial interference with the Sheriff's Office operations would result if the Office had to rebid the service contract. In [Contract Exemption 2017-07](#), the Commission denied the same request by Hardy County Sheriff because the cost saving between the two bids was only \$365.

Based upon the foregoing asserted facts and the above Hardy County contract exemptions, the Commission finds that failure to receive a contract exemption would result in excessive cost, undue hardship, and substantial interference with the Mineral County Sheriff's Office. Denying this exemption would result in unnecessary financial expenses of \$1,600, and would risk the timely upfitting and servicing of critical law enforcement vehicles.

² Likewise, the Ethics Commission held in [Advisory Opinion 1995-02](#) that a state supervisor who was a psychologist may not have a contract under the Ethics Act for psychological services with his public employer because he had control over the contract due to his duty to monitor it. Based on this Opinion and others, the Commission finds that the contract with Deputy Reall and/or his company would be prohibited by both W. Va. Code § 61-10-15 and the Ethics Act.

Therefore, the Ethics Commission grants a contract exemption to the Mineral County Sheriff and County Commission allowing the contract with Deputy Reall's business for installing and servicing the upfitting equipment. Deputy Reall may not use county time or resources to fulfill his obligations under the contract.

If the Requesters seek future contract exemptions for these services from the Deputy, they must submit written evidence that an attempt was made to obtain quotes or bids from other vendors to ensure no other vendors are willing and able to provide the County comparable services at a comparable price.

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