

## **Contract Exemption 2025-03**

**Issued on April 3, 2025, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

Troy A. McCoy, the Pocahontas County Sheriff, is requesting a contract exemption allowing the Sheriff's Office to contract with Shinaberry's Graphics, LLC, a business owned and operated by Deputy Brian Shinaberry, to install graphics and decals on department vehicles.

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

The Sheriff's Office has experienced difficulty in having graphics and decals installed on its department vehicles. The Requester asserts that a number of years ago, a business in Alderson and a business near Snowshoe had installed vehicle graphics and decals for the department, but both businesses have since gone out of business. After that, a person in another county performed the work, but the department was not satisfied with the work.

In 2018, Deputy Brian Shinaberry started Shinaberry's Graphics, LLC, a graphics company making signs, tee shirts, and the like. At that time, the previous Sheriff was not satisfied with the graphics and decals work that had been done in the past, so he asked Deputy Shinaberry if his business was able to do the work. The Deputy advised that he could do the work and provided an estimate. The Sheriff decided to contract with Shinaberry's Graphics. Deputy Shinaberry did not participate, on behalf of the Sheriff's Office, in the Sheriff's decision to contract with Shinaberry's Graphics.

Since taking office in January 2025, the Requester and his staff have made attempts to locate other vendors within a reasonable distance of the Sheriff's Office in Marlinton, Pocahontas County, to install the graphics and decals. Shinaberry's provided a quote of \$668 per vehicle to install graphics and decals. The Requester's Office contacted Rocky Fork Enterprises, in Charleston, and West Virginia Public Safety Equipment, in Morgantown. Neither business has provided a written cost estimate, and the Requester asserts that both businesses are a prohibitive distance from Pocahontas County.

The Requester's Office contacted a third vendor, Emblazon Sign Company, in Elkins. Emblazon provided a written estimate of \$750 per vehicle. The Sheriff, however, asserts that Elkins is a prohibitive distance from the Sheriff's Office, being at least a one-and-a-half-hour drive each way. To use Emblazon, two deputies and cruisers must drive this distance, return to Marlinton, and return to Elkins the following day to retrieve the vehicle. The Requester asserts that he is currently very short-staffed, having only three certified deputies.

The Sheriff's Office has one new cruiser that needs graphics and decals installed immediately, so it can be put into service. The Sheriff will have three other vehicles this calendar year that will need graphics and decals.

**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 sheriff deputies 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.<sup>1</sup> The Ethics Commission must determine whether, based upon the limitations in these Code sections, the Sheriff's Office may contract with Shinaberry Graphics, LLC, a business owned and operated by Deputy Brian Shinaberry, to install vehicle graphics and decals on department vehicles.

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."<sup>2</sup> To determine whether Deputy Shinaberry 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 Sheriffs in Mineral and in Hardy County.

In [Contract Exemption 2025-01](#), the Commission noted that Deputy Reall in Mineral County had extensive experience in police vehicle upfitting and maintenance and that he was the deputy who was assigned to oversee the Sheriff's Office's fleet of vehicles. The Commission held, "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." In a similar request, [Contract Exemption 2016-05](#), the Hardy County Sheriff

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

<sup>2</sup> Because this Code has a stricter standard, the Commission will not need to analyze whether a contract exemption is necessary under W. Va. Code § 6B-2-5(d)(4).

asked to contract with a deputy sheriff's company to purchase lighting equipment for two county cruisers. 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 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 Shinaberry's situation in Pocahontas County is comparable to that of the deputies involved in Contract Exemptions 2025-01 and 2016-05. Consequently, he has sufficient control over the graphics and decals contract, making a contract exemption necessary.

### *Contract Exemption*

The Ethics Commission will now decide whether to grant a contract exemption pursuant to W. Va. Code § 61-10-15(h). The Commission must grant an exemption if the prohibition "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 Commission will again look at the contract exemptions requested by the Sheriffs in Mineral County and 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's operations would result if the office had to rebid the service contract. In [Contract Exemption 2017-07](#), the Commission denied the same request by the Hardy County Sheriff because the cost saving between the two bids was only \$365 and because there were "no facts which indicate that awarding the contract to the second lowest bidder will cause undue hardship or result in other substantial interference with the operation of the Sheriff's Office." In Contract Exemption 2025-01,

the Commission granted the exemption because of a cost savings of \$1,600 and because denying the exemption “would risk the timely upfitting and servicing of critical law enforcement vehicles.”

In this request, the Pocahontas County Sheriff’s Office would not see a substantial cost saving by contracting with Shinaberry’s instead of Emblazon. However, the Requester asserts that a hardship would result because two deputies and cruisers would need to drive at least a one-and-a-half-hour drive each way and return to Elkins the following day to retrieve the vehicle. The Requester asserts that he is currently very short-staffed, having only three certified deputies. Therefore, the Requester has shown that an undue hardship or other substantial interference with the operation of the Sheriff’s Office would result if the exemption is not granted.

**Therefore, the Ethics Commission grants a contract exemption to the Pocahontas County Sheriff’s Office allowing it to contract with Deputy Shinaberry’s business, Shinaberry’s Graphics, LLC, to install graphics and decals on the department’s four vehicles mentioned. Deputy Shinaberry may not use county time or resources to fulfill his obligations under the contract.**

**If the Requester seeks subsequent contract exemptions for these services from Shinaberry’s Graphics, the Sheriff must verify that the Sheriff’s Office sought quotes or bids from other vendors to ensure no other vendors are willing and able to provide 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