

## **CONTRACT EXEMPTION 2016-01**

**Issued on April 7, 2016, by**

### **THE WEST VIRGINIA ETHICS COMMISSION**

#### **EXEMPTION SOUGHT**

The City of Cameron seeks an exemption to allow it to purchase materials and supplies from Cameron Hardware, which is owned by its Mayor, K. Scott Chaplin.

#### **FACTS RELIED UPON BY THE COMMISSION**

The City of Cameron is a Class IV municipality located in Marshall County, West Virginia, with a population of fewer than 1,200 residents. Its governing body consists of a Mayor and six council members. The City has an appointed City Clerk and the following employees: assistant city clerk, water plant operator, sewer plant operator, two street/alley employees, chief of police and two police officers.

The City historically has purchased materials and supplies for maintenance work from two businesses located within city limits. These businesses are Cameron Hardware, which is owned by Mayor Chaplin, and Cameron Lumber Company.

The City Council appointed Chaplin as its Mayor on February 8, 2016, after its former Mayor resigned. Mayor Chaplin is a candidate for Mayor in the upcoming election for a term which commences on July 1, 2016, and ends on July 1, 2018. He is the only candidate for this position.

The City purchases a limited amount of items from Mayor Chaplin's store and he is not involved in these decisions. The two maintenance employees have authority to make purchases from either Cameron Hardware or Cameron Lumber Company. For larger purchases, e.g., a chainsaw, these employees first check with City Clerk Deborah Hall. The Requester states, "Our workers purchase from both places, if one place doesn't have it then they try the other place. If unable to purchase from either store, we have a 30-minute drive one way to get to another hardware or lumber store."

The City's purchases from Cameron Hardware during this calendar year have not exceeded \$1,000, which is an amount within the limited financial interest exception in the Ethics Act. City Clerk Deborah Hall states that historically the amount of purchases from Cameron Hardware average \$3,000 to \$5,000 per calendar year. Examples of purchases include nails, paint, bolts, screwdrivers, pipe fittings, PVC pipe, glue, tape, ladders and clamps. In the past the City has also purchased small power drills and salt for its roads and sidewalks from the store.

## **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W.Va. Code § 6B-2-5(d)(1) states, in relevant part:

In addition to the provisions of section fifteen, article ten, chapter sixty-one 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

...

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

In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed one thousand dollars in the profits or benefits of the public contract or contracts in a calendar year;

...

W.Va. Code § 6B-2-5(d)(3) states, in relevant part:

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.

## **ADVISORY OPINION**

Pursuant to W.Va. Code § 6B-2-5(d)(1), a public official may not have more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control. There is an exception for contracts which do not exceed \$1,000 per calendar year.<sup>1</sup>

The City of Cameron states that City workers will need to drive at least 30 minutes one way if the City cannot purchase items from Cameron Hardware or Cameron Lumber Company. The Ethics Commission must determine whether prohibiting the City from contracting with the Mayor's business would result in excessive cost, undue hardship or other substantial interference with the operation of the City.

The Ethics Commission historically has found that for small cities in less populated areas, it may create an undue hardship on these cities to require their employees to travel longer distances to make certain smaller purchases. For example, in Contract Exemption 2007-04 the Commission granted the City of Ripley an exemption to allow it to make incidental purchases from a hardware store owned by a recently elected city council member. The Commission held:

Based upon the foregoing, the Ethics Commission grants the City of Ripley an exemption for incidental purchases from the prohibition of W.Va. Code § 6B-2-5(d) to allow it to purchase parts and accessories, and to obtain services from Moore's that are otherwise not available in Jackson County. The exemption is granted with one limitation: should the City determine it needs to purchase a new tool or other piece of equipment (other than a Stihl part or accessory for an existing tool) that exceeds the cost of \$100.00 (one hundred dollars), it may not make any such purchase from Moore's.

*Id.* at 2.

Similarly, in Contract Exemption 2008-06 the Commission authorized the City of Belington to purchase a limited amount of merchandise and services from a hardware store owned by a city council member. In granting the exemption, the Commission reasoned, "[i]f the City were unable to transact business with Steve's Home and Farm Supply, it would incur costs such as travel time, wear and tear on City vehicles, and increasingly expensive gasoline." *Id.* at 1. In Contract Exemption 2008-14, the Ethics Commission authorized the City of Weirton to make limited purchases from a hardware store which was a "ten minute round trip from the City's Public Works Department." *Id.* at 2.

Based upon the facts presented in the instant case, the Ethics Commission finds that it would result in undue hardship and substantial interference with governmental operations

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<sup>1</sup> While it is permissible to have a limited interest, the affected public official "may not make, participate in making, or in any way attempt to use his office ... to influence a government decision affecting his or her financial or limited financial interest." W.Va. Code § 6B-2-5(d)(3).

if the City of Cameron was in all circumstances prohibited from making any purchases from Cameron Hardware.

The Commission holds that the City may contract with Cameron Hardware for incidental purchases. The following limitations apply:

**First**, the total purchases from the store in one calendar year may not exceed \$2,500.00.

**Second**, the value of any one item purchased may not exceed \$100.00.

**Third**, for items which the City elects to purchase locally, e.g., nails, pipes or lumber for small repairs, items may only be purchased from Cameron Hardware when no other local business has the item.

**Fourth**, the Mayor may not participate in any decisions relating to purchases from, or payments to, his store. He may not attempt to influence City employees or officials to make purchases from his store.

**Fifth**, the Mayor must recuse himself from all votes relating to purchases from, or payments to, his store. For recusal to be proper, he must first fully disclose on the record his disqualifying interest, then he must leave the room during the discussion, deliberation and vote on the matter. In addition, the minutes or record of the meeting must reflect the basis for the recusal and that he left the room during all consideration, discussion and vote on the item under consideration.

**In conclusion, the City of Cameron is granted an exemption to make incidental purchases from Cameron Hardware in an amount not to exceed \$2,500.00 in a calendar year and subject to the other limitations outlined above.**

**This contract exemption is effective until July 1, 2018, at which time the City must submit a new request for an exemption if it seeks to continue to purchase materials or supplies from Cameron Hardware. <sup>2</sup>**

*The 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.*

  
Robert J. Wolfe, Chairperson  
WV Ethics Commission

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<sup>2</sup> If Chaplin does not seek re-election, resigns or is not re-elected, then this step is no longer necessary.