

Contract Exemption 2019-01

Issued on March 7, 2019, by

The West Virginia Ethics Commission

Opinion Sought

The **Wyoming County Health Department** requests an extension of Contract Exemption 2018-04 to allow it to continue contracting with Family Healthcare Associates Inc.

Facts Relied Upon by the Commission

In Contract Exemption 2014-02, the Ethics Commission granted the Wyoming County Health Department (“Health Department”) a Contract Exemption authorizing it to contract with Family Healthcare Associates Inc. (“Family Healthcare”) to provide family planning, breast and cervical cancer screenings and other medical services to patients served by the Health Department’s Women’s Health Program. The Contract Exemption was for a period not to exceed two years. It was necessary for the Health Department to obtain the Contract Exemption, pursuant to W. Va. Code § 61-10-15, due to its part-time Health Officer’s ownership interest in the company and a Board Member’s relationship with another owner of the business. The initial contract rate with Family Healthcare was \$45 per hour for medical services, which included malpractice insurance.

In 2016, the Health Department requested that the Ethics Commission extend the Contract Exemption, and the Ethics Commission, based upon the facts presented, granted the Requester another Contract Exemption authorizing it to continue contracting with Family Healthcare for a period not to exceed two years at the same rate.¹

In 2018, the Health Department requested and received a Contract Exemption authorizing it to continue contracting with Family Healthcare at the same rate of \$45 per hour for medical services, which included medical malpractice insurance coverage, for a period not to exceed six months.² The Ethics Commission directed the Health Department that before requesting another Contract Exemption, “it must demonstrate that it took meaningful efforts to obtain quotes or bids from other qualified medical providers which are willing and able to provide the needed services.”

In support of its current Contract Exemption request, the Health Department has provided documentation showing that it complied with the Ethics Commission’s directive in the 2018 Contract Exemption. It advertised for medical providers in the hard copy and on-line editions of the Bluefield Daily Telegraph, Charleston Gazette-Mail, The Herald-Dispatch, The Logan Banner and The Register-Herald, and through Monster.com. The cost of the advertising was \$1,281.39. The Health Department states it only received one candidate contact through Monster.com, and it did not consider him to be qualified

¹ Contract Exemption 2016-02

² Contract Exemption 2018-04

because the candidate did not submit a bid or provide his credentials and educational background. The Requester has therefore concluded that the only viable option is for it to continue contracting with Family Healthcare Associates Inc. at the rate of \$45 per hour, including medical malpractice insurance coverage.

The Health Department paid Family Healthcare \$4,497.50 in Fiscal Year 2017 and \$3,690 in Fiscal Year 2018.³ The Health Department has paid Family Healthcare \$1,935 for the first half of Fiscal Year 2019. The Health Department anticipates that its payments to Family Healthcare for the next three fiscal years will be less than \$ 5,000 per fiscal year.

The Board Member and the Health Officer who have financial interests in the contract have not been involved in making any decisions that affect the Health Department's contract with Family Healthcare.

Provisions Relied Upon by the Commission

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

[N]o 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 Provided, however, That nothing herein shall prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

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

³ The Health Department's fiscal year runs from July 1 until June 30.

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(a) states, in relevant part:

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 a member . . ., he or she may have any voice, influence or control . . .

W. Va. Code § 61-10-15(h) states, in relevant part:

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

W. Va. Code § 61-10-15 imposes criminal penalties against county officials, including board of health members and health officers, who are pecuniarily interested, either directly or indirectly, in the proceeds of a public contract over which those officials exercise voice, influence or control unless their governing body seeks, and receives, an exemption to contract with the public official. The Health Department needs a Contract Exemption to continue contracting with Family Healthcare because of the ongoing financial relationship of a Board Member and its Health Officer with the business.⁴

The Ethics Commission may grant an exemption from the prohibition in W. Va. Code § 61-10-15 if the prohibition results in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency. In evaluating the Contract Exemption request, the Commission has considered that the Requester made

⁴ The Ethics Act also contains restrictions on public officials having an interest in public contracts over which they may exercise control, but there is an exception in the Act for part-time appointed officials who recuse themselves from the consideration and award of the contract. As the Board Member and Health Officer are part-time appointed officials and have not been involved in awarding the contract, they meet the exception and the contract with Family Healthcare is therefore, for purposes of the Ethics Act, permissible. W. Va. Code § 6B-2-5(d).

a good faith effort to solicit bids for other qualified medical providers for its Women's Health Program, but that no qualified providers responded. The Health Department, therefore, seeks this Contract Exemption to continue having Family Healthcare provide medical services for its Women's Health Program.

The Ethics Commission finds that denial of the Contract Exemption would result in substantial interference and undue hardship to the Wyoming County Health Department. It hereby grants the Wyoming County Health Department a Contract Exemption to allow it to continue contracting with Family Healthcare at a rate of \$45 per hour, including medical malpractice insurance, for a period not to exceed three years.

The Contract Exemption will expire on March 7, 2022. If the Requester submits another Contract Exemption request, it must again demonstrate that it took meaningful efforts to obtain quotes or bids from other qualified medical providers which are willing and able to provide the needed services.

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