

## **CONTRACT EXEMPTION 2016-03**

**Issued on October 6, 2016, by**

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

#### **OPINION SOUGHT**

The **City of Belington** requests a Contract Exemption to allow it to use its Mayor's wrecker service for the towing and impoundment of vehicles.

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

The City of Belington ("City") is located in Barbour County, West Virginia, and has a population of fewer than 1,900 residents. The Requester's current Mayor, Matthew Ryan, was elected to a two-year term that began on April 1, 2015, and will end on March 31, 2017. Ryan owns Ryan's Recker (sic) Service, which received \$524.50 from Requester during the period of July 1, 2015, through June 30, 2016. The City states that, with the exception of one instance, all of the services provided by Ryan were at the request of law enforcement pursuant to the towing request guidelines in the Barbour County Emergency Communications Standard Operating Procedures Manual ("guidelines"). The other instance involved Ryan towing a City vehicle that had gone over an embankment. The City seeks a Contract Exemption for Ryan's Recker Service to continue to provide towing and impoundment services.

The City has provided the Barbour County guidelines for responding to tow requests from law enforcement officers. The guidelines provide that a rotation log be used for each tow request by law enforcement, starting with the top listed tow company and taking turns down the list. Companies that either accept a tow or are unavailable to accept a tow are placed at the bottom of the list. The guidelines additionally provide that Barbour County contains North and South Divisions. Each division consists of tow companies that operate in the division, and each division maintains its own rotation log. The City states that Ryan's Recker Service and one other tow company, Shahan's Salvage, are located in the South Division, which is where the City is located.

The guidelines provide for two types of requests from a law enforcement officer: Owner Requests and Next-in-Line Requests. With either request, the dispatcher is required to make contact with the appropriate towing company. If the request is an Owner Request, the dispatcher makes contact with the tow company chosen by the vehicle owner. If the request is a Next-in-Line Request, the dispatcher determines the location of the tow and ascertains the appropriate company by consulting the relevant tow log. The dispatcher handling the tow requests is employed by the Barbour County Communications Center. Neither the City nor Mayor Ryan is involved in the decision of which tow company is contacted.

The City states that it subsequently receives a bill for the towing and impoundment of vehicles made at the request of its law enforcement officers. City council subsequently approves the bill payment. The City states that its Mayor has no involvement or oversight over these payments. In addition, in the case of criminal forfeitures, the City is reimbursed the towing and impoundment bill from the sale of the assets.

**PROVISIONS RELIED UPON BY THE COMMISSION**

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

- (1) 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: . . . *Provided, however,* That nothing herein shall be construed to . . . 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.

...

- (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.

158 CSR 8-3 states in relevant part:

- 3.1. A limited interest is:

- a. An amount not to exceed \$1,000.00 in the gross revenues in a public contract or contracts per calendar year. The \$1,000.00 limit is applicable to gross revenues received through a public contract by a public official or employee, an immediate family member thereof or a business with which the public official or employee or immediate family member is associated.

...

- 3.2. If a public official or employee has more than a limited interest in a public contract, then such an interest is only permissible if the public agency with whom the public official or employee works or serves seeks and receives a contract exemption in accordance with W. Va. Code § 6B-2-5(d)(4)). This requirement does not apply to part-time appointed officials who, in accordance with the Ethics Act, may have an interest in a public contract if they recuse themselves from the decision-making process.

### **ADVISORY OPINION**

W.Va. Code § 6B-2-5(d) prohibits public officials and public employees from having an interest in public contracts over which they have direct authority or control. “This prohibition prevents a City from doing business with a business owned by its Mayor or other City officials or employees who exercise control over its contracts.” Contract Exemption 2010-02. The instant request involves two separate types of occasions in which the City is billed for services provided by the Mayor’s wrecker service. The first type involves a tow request from law enforcement pursuant to the Barbour County Commission’s tow request guidelines. The second type involves the Mayor directly towing a City vehicle pursuant to the City’s direction. The opinion will address each in turn.

When a law enforcement officer requests a tow under Barbour County’s tow request guidelines, the dispatcher at the Barbour County Communications Center is contacted. The dispatcher subsequently contacts the appropriate tow company according to the tow request guidelines. Accordingly, when Ryan’s Recker Service is contacted by a dispatcher in this situation, neither the City nor the Mayor has authority or control over whether Ryan’s Recker Service is contacted. Pursuant to the guidelines, the dispatcher is mandated to either contact the tow service at the vehicle owner’s request or to contact the next available tow company according to the tow log.

**The Mayor has no direct authority or control over selecting which tow company will be used in the practice being followed by the City for towing requests made by law enforcement. Since the Mayor has no such direct authority or control, the City is not required to seek a Contract Exemption to allow it to pay its Mayor for law enforcement towing requests made pursuant to the guidelines. Additionally, while the City states that its Mayor has no involvement or oversight over approving the**

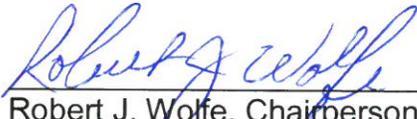
**subsequent bills for such towing, the Commission nonetheless reminds the City that its Mayor is prohibited from doing so where the bill is to be paid to Ryan's Recker Service. W.Va. Code § 6B-2-5(d)(3); W.Va. Code § 6B-2-5(j).**

In regard to those occasions where the City directly selects and contracts with the Mayor to perform towing services, a Contract Exemption is needed. See, i.e., Contract Exemptions 2016-01; 2012-03; 2010-02. However, the Ethics Act includes an automatic exemption from the prohibition on having an interest in a public contract where the interest in a contract or series of contracts does not exceed \$1,000 in a calendar year. W.Va. Code § 6B-2-5(d)(2); 158 CSR 8-3.1.

**Because the City does not ordinarily expend more than \$1,000 each year from Ryan's Recker Service, it is not necessary for the Ethics Commission to determine whether to grant a Contract Exemption. The City has an exemption by operation of statute. If, however, the City needs to spend in excess of \$1,000 annually at Ryan's Recker Service, it must make a request to the Ethics Commission for a hardship exemption. Before seeking such an exemption, the City must seek competitive bids or quotes from all qualified towing services and offer sufficient proof of hardship that would result to the Town if the Mayor's wrecker service could not be used.**

The Commission reminds the City that even when the Mayor has a limited financial interest, the Mayor may not make, participate in making, or in any way attempt to use his office or employment to influence the City's decision affecting his limited financial interest. W.Va. Code § 6B-2-5(d)(3).

*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.*

  
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Robert J. Wolfe, Chairperson  
WV Ethics Commission

## **CONTRACT EXEMPTION 2016-04**

**Issued on October 6, 2016, by**

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

#### **OPINION SOUGHT**

The **Town of Rowlesburg** requests a Contract Exemption to allow it to accept a loan from its Mayor, Barbara Banister, in the amount of \$54,637.94.

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

The Town of Rowlesburg ("Town") has been required to update its sewer and storm water system due to the system allowing sewage to enter the Cheat River when it rained. The Town hired Beitzel Corporation to modify the system to alleviate the problem. The project cost the Town \$47,223.74. The Town paid Beitzel \$500 in July 2015 and \$500 in September 2015. While attempting to obtain a commercial bank loan to pay the balance, the Town received a notice from Beitzel that it was assessing late fees of \$7,914.20 to the total amount due. The Town states that the total balance owed is currently \$54,637.94.<sup>1</sup>

Mayor Banister subsequently spoke to a manager at Clear Mountain Bank, who informed her that it would take at least five months for the Town to obtain a commercial loan from the bank. The Town states that it cannot wait an additional five months because Beitzel would assess additional late fees. The bank manager suggested that Mayor Banister and her husband could loan the Town the money.

Mayor Banister states she and her husband will lend the money to the Town and that the bank will act as the loan servicer. The bank manager set payments on the proposed loan at \$954.20 per month, an amount the Town reportedly can afford. The amount includes charges from the bank for servicing the loan. Mayor Banister states that she and her husband understand that they may not benefit in any way from lending money to the Town, and that the servicing charges will not benefit her or her husband.

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

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

- (1) 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

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<sup>1</sup> The balance owed based on the figures provided totals \$54,137.94. However, the Town provided minutes from a September 12, 2016, special meeting that reflects the amount due to Beitzel Corporation is \$54,637.94.

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 be construed to . . . 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.

...

- (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.

158 CSR 8-3 states in relevant part:

3.1. A limited interest is:

- a. An amount not to exceed \$1,000.00 in the gross revenues in a public contract or contracts per calendar year. The \$1,000.00 limit is applicable to gross revenues received through a public contract by a public official or employee, an immediate family member thereof or a business with which the public official or employee or immediate family member is associated.

...

- 3.2. If a public official or employee has more than a limited interest in a public contract, then such an interest is only permissible if the public agency with whom the public official or employee works or serves seeks and receives a contract exemption in accordance with W. Va. Code § 6B-2-5(d)(4)). This requirement does not apply to part-time appointed officials who, in accordance with the Ethics Act, may have an interest in a public contract if they recuse themselves from the decision-making process.

## ADVISORY OPINION

The Ethics Commission previously has considered a Contract Exemption request in the form of a proposed loan from Mayor Banister to the Town of Rowlesburg. In Contract Exemption 2007-05, the Commission held that a proposed interest-free loan from the Mayor constitutes a prohibited financial interest under W.Va. Code § 6B-2-5(d)(1). In its analysis, the Commission stated that “[n]otwithstanding the fact that the Mayor will not realize any profit from making an interest free loan to the Town, by loaning money to the Town, the Mayor becomes the Town’s creditor.” *Id.* The Commission further reasoned:

If the Town were ever in a situation where it lacked funds to cover all of its outstanding debts, the Town would be in a position of deciding among its creditors—including its Mayor—which to pay. Further, if in the unfortunate event the Town had to declare bankruptcy, the Mayor would be competing with other creditors for whatever money was available for disbursement.

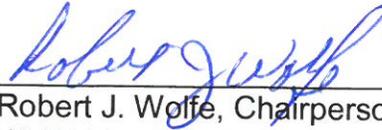
*Id.* The Commission held that W.Va. Code § 6B-2-5(d) “prevents a Town from accepting even an interest free loan from its Mayor.”

The Ethics Act provides, however, that the Ethics Commission may grant a municipality an exemption from this prohibition, if the agency demonstrates that its enforcement will cause the agency excessive cost, undue hardship or substantial interference with its operation. W.Va. Code § 6B-2-5(d)(4). In Contract Exemption 2007-05, the Commission granted the Town of Rowlesburg an exemption permitting it to borrow \$2,000 from Mayor Banister and her husband at no interest. The Commission found that “the Town ha[d] demonstrated its attempts to obtain money from other sources[,]” and additionally took “administrative notice that the Town would be unable to obtain an interest-free loan from a bank or other commercial lender.” It held that the loan must be unsecured and that Mayor Banister must be recused from any matters regarding approving and repayment of the loan. *Id.*

In the instant request, the Town states that it cannot wait an additional five months to secure a commercial loan from the bank for fear that Beitzel Corporation will add additional charges to the \$54,637.94 already owed. The Town does not appear to have approached any commercial lender other than Clear Mountain Bank to determine whether it must wait five months to obtain a commercial loan. However, as in Contract Exemption 2007-05, the Commission takes administrative notice that the Town would be unable to obtain an interest-free loan from a bank or other commercial lender.

**In conclusion, the Ethics Commission grants the Town of Rowlesburg an exemption from the prohibition of W.Va. Code § 6B-2-5(d) permitting it to borrow \$54,637.94 from Mayor Barbara Banister and her husband at *no interest*. The loan must be unsecured, and Mayor Banister must properly recuse herself from any matters regarding approval or repayment of the loan.**

*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.*



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Robert J. Wolfe, Chairperson  
WV Ethics Commission

## CONTRACT EXEMPTION 2016-05

Issued on October 6, 2016, by

### THE WEST VIRGINIA ETHICS COMMISSION

#### OPINION SOUGHT

The **Sheriff of Hardy County** requests an exemption to purchase emergency lighting equipment for the office's cruisers from a business owned by one of his deputies. He further requests an exemption to make future purchases at this business and at another business in which the employee has an ownership interest.

#### FACTS RELIED UPON BY THE COMMISSION

The Requester is an elected County Sheriff. The Requester wants to purchase emergency lighting equipment for two of the office's cruisers from a business owned by a deputy in his office. He states that the cost of the equipment would be approximately \$450 per unit per cruiser.

He states this cost represents a significant savings from the cost of \$900 per unit per cruiser previously paid by the Sheriff's Office to another vendor. He states that the Deputy's business will also be able to deliver the items in a timelier manner.

The Deputy is a certified dealer for the equipment. If the equipment requires repairs, the Requester states it will not be repaired by the Deputy's business. Instead, it will either be sent to the manufacturer for repair or to another business.

The Requester has related that there are fewer than 15 deputies in his office. As it is a small office, everyone pitches in to meet the needs of the office.

The Deputy from whom he seeks to purchase the emergency lighting equipment has various skill sets. One of these skills is the ability to install lighting equipment on emergency service vehicles. The Deputy has in the past assisted the office with installing lighting equipment on its vehicles. The Deputy performs the work on the office's vehicles during his work shift. He is not paid additional compensation for this work.

The Deputy also has financial interests in two other businesses. According to the Requester, the Deputy recently "went into partnership with a local established business that the County has used to purchase supplies and/or equipment in the past, prior to the employee being involved in the business." This business sells electronic and computer equipment and related components. It also sells batteries and other similar items. It is an authorized RadioShack™ dealer. The Requester also seeks to continue making purchases from this business.

There is also reference in the Contract Exemption request that the Deputy owns a third business “relating to electronic equipment sales, repairs and installation.” The Requester provides no information regarding what equipment or services his office may seek to purchase or use from this business.

Another skill set of the Deputy relates to computers and office technology. He is the Sheriff’s Office’s forensic examiner. His job duties include investigating cybercrimes and assisting with the forensic examination of computers and other electronic devices for criminal investigations. As it is a small office, the Deputy is also considered the technical specialist in the office. In this role, he assists in troubleshooting computer problems and fixing minor problems when he can.

The Requester states that deputy sheriffs below the rank of sergeant do not have voice, control or influence over purchases made by or on behalf of the Sheriff’s Office. He states: “The employee is a full-time Deputy Sheriff who does not have any decision making authority to enter into contracts to purchase equipment.”<sup>1</sup> The Requester also states, “There would not be any special treatment or compensation for either party involved in the contract.”

The Requester states, “The employee’s business would only be utilized in the event that he was the low bid on a contract.” The Requester has clarified this representation. He states when the office purchases emergency lighting equipment, it generally obtains quotes but does not advertise for bids from the public. The majority of purchases made by the office from the Deputy’s other businesses would not be put out for bid because of the low purchase prices.

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

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

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)(1) states, in relevant part:

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<sup>1</sup> The rank of the Deputy is “Deputy Sheriff 1<sup>st</sup> Class,” a rank below sergeant.

[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....

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.

W.Va. Code § 61-10-15(a) states, in pertinent 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 ... [an] officer ..., he or she may have any voice, influence or control ....

### **ADVISORY OPINION**

Both the Ethics Act, at W.Va. Code §§ 6B-2-5(b) and (d), and W.Va. Code § 61-10-15, a criminal misdemeanor statute that applies to certain county officials and employees, prohibit 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 purchase emergency lighting equipment from the Deputy or make purchases from the other business in which he has an ownership interest.

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 if they have "voice, influence or control" over the contracts. The West Virginia Supreme Court has held that this Code section:

[I]mplements the public policy of this State, and its provisions are clear and unambiguous. Although harsh, its objects and purposes are salutary. The purpose of the statute is to protect public funds, and give official recognition to the fact that a person cannot properly represent the public in transacting business with himself. To permit such conduct would open the door to fraud. The statute is designed to remove from public officers any and all temptation for personal advantage.

Alexander v. Ritchie, 132 W. Va. 865, 871, 53 S.E.2d 735, 739 (1949)

The Ethics Commission must consider whether the Deputy exercises voice, influence or control over the purchase of emergency lighting equipment by the Sheriff's Office. If so, the Sheriff may only purchase this equipment from the Deputy if the Ethics Commission grants the Sheriff's Office an exemption authorizing it to make the purchase.<sup>2</sup>

In Advisory Opinion 2013-15, the Commission found that the Sheriff's Chief Law Enforcement Deputy was a public official subject to the limitations of W.Va. Code § 61-10-15. *Id.* at page 5. The Commission further held that based upon the job responsibilities of the chief deputy, he was prohibited from entering into a contract to perform additional services for the County 911. *Id.* The Commission qualified its holding as follows: "This conclusion should not be construed as a finding that a law enforcement deputy or chief law enforcement deputy has voice, influence or control over every contract to which the sheriff is a party. Instead the finding herein as to the MOU (Memorandum of Understanding) and subsequent agreement is fact specific." *Id.*, fn. 2.

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<sup>2</sup> Further, if the Deputy is subject to the restrictions in W.Va. Code § 61-10-15, then it is not necessary for the Commission to analyze the application of the Ethics Act as it would be academic.

In Advisory Opinion 1999-02, the Ethics Commission ruled a multicounty vocational school instructor may not bid on the school's sale of a modular home constructed by its students. The Commission held: "It is clear that the instructors do not have the authority to award a contract of sale for the home. However, they do exercise considerable control over the construction of the home." *Id.* at page 2. In that Opinion, the Commission was examining what constitutes "control" for purposes of analyzing the public contract limitations in the Ethics Act. This same analysis is relevant to interpreting the limitations in W.Va. Code § 61-10-15, which extend to public servants in county government who exercise voice, influence or control.

Similarly, in Advisory Opinion 1995-02, the Commission held a public employee could not have an interest in a public contract being awarded by his agency. The Requester was a licensed psychologist at a state correctional institution and served as a supervisor. He wanted to hold a contract with the Institution to moonlight as a consulting psychologist to perform services such as testing and evaluating inmates. The Requester had no influence over the awarding of the contract; however, the Commission held that he could not hold this contract because his full-time job responsibilities included overseeing the consulting psychologist. The Commission reasoned that as a supervisor of the consulting psychologist, the Requester had the requisite authority or control over the contract.

The determination of whether the Deputy exercises voice, influence or control is a fact-specific determination made by examining his job duties and the structure of the office. In the present case, the Requester has made it clear that this Deputy, who holds a rank below sergeant, has no authority to enter into contracts on behalf of the office, e.g., he has no signatory authority or authority to direct that certain purchases be made. Nevertheless, as demonstrated by the Advisory Opinions cited above, the exercise of "voice, influence or control" over a public agency's contracts, including purchases, extends beyond authority to financially commit the agency to a particular purchase.

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.** <sup>3</sup>

## **EXEMPTIONS**

Next, the Commission must determine whether to grant an exemption to the Sheriff's Office to purchase the two emergency lighting units from the Deputy. The Ethics Commission is authorized to exempt agencies from the prohibitions in W.Va. Code § 61-10-15 if the restrictions in this Code section “would result in ... excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency ...” W.Va. Code § 61-10-15(e).

Based upon the information provided, if the Sheriff's Office purchases two emergency lighting equipment units from the Deputy, the total cost will be \$900 (\$450 per unit). In contrast, if it purchases the units from its previous vendor, the cost will be \$1,800 (\$900 per unit). Based upon the foregoing, the Ethics Commission finds it would result in excessive cost and undue hardship to prohibit the Sheriff's Department from purchasing these two units from the Deputy.

**Therefore, the Sheriff is granted an exemption to purchase two emergency lighting equipment units from the Deputy.**<sup>4</sup> **The Deputy's business may not be paid additional money to service the units.**

**If the Requester seeks future Contract Exemptions for the purchase of additional emergency lighting equipment from the Deputy, he 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 sell the office comparable units at a comparable price.**

Next, the Commission must determine whether to grant an exemption to the Sheriff's Office to purchase equipment from the Deputy's business which sells electronic and computer equipment and related components. This business also sells batteries and other similar items.

The Deputy has expertise in computer technology based upon his law enforcement training and duties. Additionally, due to this skill set, he serves as a technical advisor to the office for technological matters.

The Requester provides limited information about this other business or about the nature of the purchases his office anticipates making from it. The Requester and his office have been very cooperative in providing the Commission information. Nevertheless, the Commission is unable to determine whether an exemption is needed or warranted without

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<sup>3</sup> A deputy sheriff takes an oath of office. W.Va. Code § 6-3-1(a)(4). For this reason, and in accordance with Advisory Opinion 2013-15, the Commission finds that deputy sheriffs are subject to W.Va. Code § 61-10-15, which applies to certain county officials and employees.

<sup>4</sup> This exemption is also granted pursuant to W.Va. Code § 6B-2-5(d).

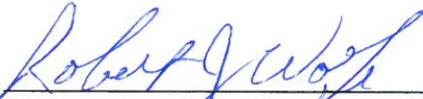
additional written information which sets forth: what items the office purchases from this business, the nature of the purchases, the costs of the purchases from this business by the Sheriff's Office for the last several fiscal years, whether the same items are available at other stores in the area at a comparable price, and whether the anticipated purchases relate to computer or technology equipment.

**In conclusion, based upon the facts presented, applicable law and relevant Advisory Opinions, the Sheriff's Office may purchase the two emergency lighting units subject to the limitations outlined herein.**

**The Deputy must perform work relating to the sale of the emergency lighting equipment on his own time. He may not use public resources for his private business.**

**If the Requester wants the Ethics Commission to further consider his request for an exemption to purchase items from the Deputy's business which sells computers, related components and other items, he must submit another Contract Exemption request which includes the information outlined above. This same information would be required for the Commission to consider a Contract Exemption request for purchases from the third business which sells, repairs and installs electronic equipment.**

*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.*

  
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Robert J. Wolfe, Chairperson  
WV Ethics Commission