



State of West Virginia
Office of the Attorney General

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August 12, 2016

The Honorable Patrick I. Via
Prosecuting Attorney
Office of the Greenbrier County Prosecuting Attorney
200 North Court Street
Lewisburg, WV 24901

Dear Prosecutor Via:

You have asked for an Opinion of the Attorney General regarding the transfer of property from a municipality to an area economic development corporation and subsequently to a charitable 501(c)(3) organization. This Opinion is being issued pursuant to West Virginia Code § 5-3-2, which provides that the Attorney General “may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office.” To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Office of the Attorney General.

According to your letter, the Greenbrier Valley Economic Development Corporation (“GVEDC”), a multi-county economic development authority serving Greenbrier, Monroe, and Pocahontas counties, has been approached by the municipality of White Sulphur Springs to transfer land owned by the municipality to the GVEDC. You further state that subsequent to this gift transfer, the GVEDC will transfer the land to a charitable 501(c)(3) organization for the purpose of building homes, at a discounted rate, for residents of White Sulphur Springs who were displaced by the June 23, 2016, floods.

Your letter raises the following legal question:

May White Sulphur Springs transfer land owned by the municipality to an area economic development corporation, which in turn will transfer the property to a charitable 501(c)(3) corporation for the construction of housing for citizens who have been displaced by unprecedented flooding?

Under the facts you provided, we believe that nothing in the state code would prohibit either of these transfers. The law permits a municipality, such as White Sulphur Springs, to transfer property to an area development corporation for use in economic development. And as you explain the transfers, they appear to be intended for use in economic development.

First, under West Virginia Code § 8-32-2, a municipality is authorized to “transfer and convey to such area development corporation property of any kind heretofore acquired by such municipality . . . for or adaptable to use in industrial and economic development.” The GVEDC is an area development corporation as contemplated by West Virginia Code § 8-32-2, having been organized pursuant to West Virginia Code § 31-14-1 *et seq.* In turn, as an area development corporation, the GVEDC is authorized to “purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property.” W. Va. Code § 31-14-5(d). The statute further provides that such acquisition of real property may be “by gift or purchase.” W. Va. Code § 31-14-5(e). Accordingly, White Sulphur Springs is empowered to “transfer and convey” land owned by the municipality to the GVEDC so long as the land is “for or adaptable to use in . . . economic development.” W. Va. Code § 8-32-2.

Second, though you have not provided specifics regarding the proposed project and the identity of all individuals or entities that may ultimately become involved, the proposal appears on its face to satisfy the “economic development” requirement. Economic development is not defined in West Virginia Code § 8-32-2. But based upon definitions and language found elsewhere in the code, it appears the Legislature intends the term to be given a broad definition. *See Daniel v. Simms*, 49 W. Va. 554, 39 S.E. 690, 695 (1901) (noting the importance of related statutory provision to the task of statutory interpretation). One such definition of economic development is found in West Virginia Code § 11-13A-20a(h)(3)(A), which provides that an “[e]conomic development project” is “a project in the state which is likely to foster economic growth and development in the area in which the project is developed for commercial, industrial, community improvement or preservation or other proper purposes.” That definition is consistent with the stated purpose of development authorities and corporations like the GVEDC. Such entities are created to:

promote, develop and advance the business prosperity and economic welfare of the State of West Virginia and its citizens; . . . to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain economic stability of the state[;] [to] provide maximum opportunities for employment[;] . . . and [to] improve the living of the citizens of the state.

W. Va. Code § 31-14-2(3); *see also* W. Va. Code § 7-12-7(a)(3) (noting the role of county development authorities in “promoting, developing and advancing the business prosperity and economic welfare of the area embraced”).

The proposal appears to meet this understanding of “economic development.” Given the utter devastation that has befallen wide parts of the State, including White Sulphur Springs, projects that will provide affordable housing to citizens of White Sulphur Springs will

Honorable Patrick I. Via
August 12, 2016
Page 3

undoubtedly foster economic growth, maintain economic stability, and promote the economic welfare of the State and its citizens.

In sum, based upon the facts provided in your letter, we find no legal prohibition to the proposed transfers. We believe the contemplated construction of affordable housing for citizens displaced by the June 2016 floods constitutes "economic development" within the meaning of West Virginia Code § 8-32-2 and is consistent with the statutory purpose of the GVEDC. We stress, however, that this Opinion is based solely upon the facts as they have been presented. Any different and additional facts could implicate other federal, state, or local laws, including but not limited to those regarding conflict of interest prohibitions and governmental transparency.

Sincerely,

A handwritten signature in black ink that reads "Patrick Morrissey". The signature is written in a cursive, somewhat stylized font.

Patrick Morrissey
Attorney General

Elbert Lin
Solicitor General

Steven A. Travis
Assistant Attorney General