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Eugene White, Director
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Dear Mr. White:

You have asked for an Opinion of the Attorney General regarding the meaning of "exclusively by rail" as used in West Virginia Code § 22A-2-37(a). This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advice upon questions of law . . . whenever required to do so, in writing, by . . . [a] state officer, board or commission." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence and other communications with the Office of the Attorney General.

In your letter, you explain the historical interpretation of West Virginia Code § 22A-2-37(a) by the Office of Miners' Health, Safety & Training ("OMHST"). Specifically, OMHST has concluded that track must be maintained to within five hundred feet of the face when track-mounted personnel carriers are used as the only means to transport miners to a working section, but that track does not need to be so maintained if a mine utilizes a combination of track-mounted and rubber-tired personnel carriers to transport miners to the working section. You have further explained that the OMHST interpretation of "exclusively by rail" is not changed by the recent amendments to Section 22A-2-37(a).

Your letter raises the following legal question:

Under West Virginia Code § 22A-2-37(a), when is a mine operator required to maintain track within the statutorily mandated distance of the nearest working face?

We turn first to the plain text of the statute. West Virginia Code § 22-2-37(a) currently provides, in relevant part, that "[w]here transportation of personnel is exclusively by rail, track shall be maintained to within five hundred feet of the nearest working face, except that when any section is fully developed and being prepared for retreating, then the distance of such maintenance can be extended to eight hundred feet if a rubber tired vehicle is readily available." This provision was amended during the 2015 legislative session to read, in relevant part, that "[w]here transportation of personnel is exclusively by rail, track shall be maintained to within one thousand five hundred feet of the nearest working face. . . *Provided*, That in any case where such track is maintained to within a distance of more than five hundred feet and not more than one thousand five hundred feet of the nearest working face, a self-propelled rubber-tired vehicle capable of transporting an injured worker shall be readily available." *See* Senate Bill No. 357. The amendment will take effect on June 1, 2015.

It is well settled that the Legislature's intent is primarily expressed in a statute's plain language. The Supreme Court of Appeals of West Virginia has long recognized that legislative intent—the controlling factor in interpreting a statute—is best determined from the language of the statute. *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 144-45, 107 S.E.2d 353, 358 (1959); *see also* Syl. Pt. 4, *Pond Creek Pocahontas Co. v. Alexander*, 137 W. Va. 864, 865, 74 S.E.2d 590, 591 (1953) ("In ascertaining the intent of the Legislature in the enactment of a statute and determining whether it is unambiguous, the grammatical construction, while not controlling, is an important aid.") Further, it is presumed "that a legislature says in a statute what it means and means in a statute what it says there." *King v. W. Virginia's Choice, Inc.*, 234 W. Va. 440, 766 S.E.2d 387, 391 (2014) (citations omitted).

Here, the language in the statute is clear. The Legislature specifically used the word "exclusively" to trigger the requirement to maintain track within the statutorily mandated distance of the nearest working face. That term has an ordinary and familiar meaning, of which the Legislature was undoubtedly aware. *See* Syl. Pt. 4, *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (holding that words of a statute are "to be given their ordinary and familiar significance and meaning, and regard is to be had for their general and proper use"). Something exclusive is "not shared" or is "available to only one person or group." *Exclusive*, Merriam-Webster Online, http://www.merriam-webster.com/dictionary/exclusively (last visited May 26, 2015). Indeed, the Supreme Court of Appeals said nearly ninety years ago that the word "exclusively" is synonymous with the words "only" and "solely," and is "a word of restriction and exclusion." *United Fuel Gas Co. v. Morley Oil & Gas Co.*, 102 W. Va. 374, 135 S.E. 399, 400 (1926).

Applying the ordinary and familiar meaning of "exclusively," it is plain the Legislature intended to limit the application of Section 22A-2-37(a) to situations where the transportation of miners is conducted "only" or "solely" by rail. In other words, the requirement of maintaining track within the statutorily mandated distance of the nearest working face applies only *if* a mine operator chooses to transport miners solely by track-mounted vehicles. If a mine operator does not choose to do so, it need not comply with the requirements of Section 22A-2-37(a). This Opinion does not address what other means a mine operator may legally employ to transport

miners underground, though the law plainly contemplates alternative methods of doing so. *See, e.g.*, W. Va. Code § 22A-2-38(e) ("When belts are used for transporting miners. . .").

While we do not find any ambiguity in the law, we believe that any court finding ambiguity would nevertheless defer to OMHST's interpretation, which is consistent with that described above. As the Supreme Court of Appeals has often reiterated, "[i]nterpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous." Syl. Pt. 4, *Sec. Nat. Bank & Trust Co. v. First W. Va. Bancorp., Inc.*, 166 W. Va. 775, 277 S.E.2d 613 (1981). Moreover, "[a] contemporary exposition of a statute, uncertain in its meaning, recognized and acquiesced in, for a long period of time, by the officers charged with the duty of enforcing it, the courts, the Legislature and the people, will be adopted unless it is manifestly wrong." Syl. Pt. 4, *State ex rel. Ballard v. Vest*, 136 W. Va. 80, 65 S.E.2d 649 (1951). There is nothing clearly or manifestly wrong with OMHST's interpretation, which tracks the plain text of the statutes.

Sincerely,

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Solicitor General

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