



State of West Virginia
Office of the Attorney General

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The Honorable Roger Hanshaw
Speaker of the West Virginia House of Delegates
Room 228M, Building 1
State Capitol Complex
Charleston, WV 25305

Dear Speaker Hanshaw:

You have asked for an Opinion of the Attorney General on whether the Mercer County Development Authority may hold a membership interest in a limited liability company alongside a private person or entity to carry out an economic development project.

This Opinion is being issued under West Virginia Code § 5-3-1, which provides that “[i]t is ... the duty of the Attorney General to render to ... the Speaker of the House of Delegates a written opinion ... upon any question[] submitted.” When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence and discussions with the Office of the Attorney General.

You explain that the Development Authority of Mercer County (DAMC) seeks to become a member of an ordinary West Virginia limited liability company for a particular economic development project. A private person or entity will also be a member of the Project LLC. As part of the project, the Project LLC will take title to a parcel of real property in Mercer County; the DAMC will not hold title in its own name. The DAMC does not consider the Project LLC to be a governmental “joint development entity” under West Virginia Code § 7-12-9b, and the Project LLC does not intend to claim governmental powers or special tax status. You also represent that the purpose of the underlying project is for economic development in Mercer County.

With these facts in mind, your letter raises the following legal question:

Does the DAMC have authority to hold a membership interest in the Project LLC and move forward with the project?

We conclude that West Virginia Code § 7-12-7 authorizes the DAMC to hold a membership interest in the Project LLC.

DISCUSSION

County development authorities are “public corporation[s],” W. VA. CODE § 7-12-6, created to “promote, develop and advance the business prosperity and economic welfare of the ... county,” *id.* § 7-12-2. That purpose sweeps broadly. It includes a charge to, among other things, “encourage ... through loans, investments or other business transactions ... the locating of new business and industry,” “stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the [county’s] economic stability,” “provide maximum opportunities for employment,” “improve the standard of living of the citizens of the county,” act with other organizations “in the promotion and advancement of ... recreational developments,” and “furnish money ... and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity” in the county. *Id.*

West Virginia Code § 7-12-7 specifies development authorities’ powers. And the Legislature has commanded that those powers should be “liberally construed” to encompass “full and complete power reasonably required to give effect to” a development authority’s purpose. *Id.* § 7-12-15.

With that instruction in mind, the DAMC has the authority to hold a membership interest in the Project LLC. Indeed, we conclude that West Virginia Code § 7-12-7 provides the DAMC express authority to do so for at least three reasons.

First, Subsection 7(a)(3) provides that the DAMC may “enter into contracts with any person ... including both public and private corporations.” W. VA. CODE § 7-12-7(a)(3). So, the DAMC may enter into a contract to form an LLC with a private person or entity.

Second, Subsection 7(a)(9) empowers the DAMC “to purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction.” W. VA. CODE § 7-12-7(a)(9). And according to West Virginia Code § 31B-5-501(b), “a distributional interest in a limited liability company is personal property.”

Third, Subsection 7(a)(3) vests DAMC with the power to “do any and all things necessary or convenient for the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county in which it is intended to operate, its citizens and industrial complex.” W. VA. CODE § 7-12-7(a)(3). That grant is “broadly worded.” Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Matching Contributions to Educational Institutions and Funds to Recreational Activities (July 31, 2018), 2018 WL 4608631, at *2. “Any and all things” means *any* and *all* things, which must at the very least include making “investments” and conducting “business transactions.” W. VA. CODE §§ 7-12-2, -7(a)(3); *see syl. pt. 2, Thomas v. Firestone Tire & Rubber Co.*, 164 W. Va. 763, 266 S.E.2d 905 (1980) (“The word ‘any,’ when used in a statute, should be construed to mean any.”); *United Bank, Inc. v. Stone Gate Homeowners Ass’n, Inc.*, 220 W. Va. 375, 380, 647 S.E.2d 811, 816 (2007) (“In common parlance, the adjective ‘any’ refers to

‘all.’” (cleaned up)). So long as the purpose is for “business prosperity and economic welfare,” the DAMC has full authority to move forward.

We recognize that Subsection 7(a)(3)’s general grant is followed by several specifically enumerated powers. And the spending power in Subsection 7(a)(12) bookends the powers on the other side, stating that development authorities can “expend ... funds in the execution of the powers and authority herein given.” W. VA. CODE § 7-12-7(a)(12). Together, these provisions invite the *expressio unius* inference that powers left off the list were purposefully withheld. *State v. Beaver*, 248 W. Va. 177, 194, 887 S.E.2d 610, 627 (2022). But “context shows that the enumeration was not intended to be exclusive,” here. *Springer v. Gov’t. of Philippine Islands*, 277 U.S. 189, 206 (1928). Applying the *expressio unius* canon would be wrong; the language in Article 12 doesn’t support “a sensible inference” that actions left out “must have been meant to be excluded.” *Beaver*, 248 W. Va. at 194, 887 S.E.2d at 627 (quoting *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 81 (2002)). By requiring a liberal construction and defining development authorities’ purpose broadly, the Legislature intended to maximize—not limit—development authorities’ powers. W. VA. CODE § 7-12-15.

The same principle applies to a neighboring section, Section 9b, which authorizes two or more governmental bodies to form an LLC (or other corporate entity) known as a “joint development entity” with the status, power, and tax exemption of a public corporation and political subdivision. W. VA. CODE § 7-12-9b(a), (d)-(e). By its terms, Section 9b does not reach the proposed Project LLC, which will have a private member. *Id.* § 7-12-9b(b). Section 9b instead confers special governmental attributes on wholly public ventures. *Id.* § 7-12-9b(d)-(e). Read against the Legislature’s directive to construe a development authority’s powers broadly, it is additive, not exclusive. It does not displace the DAMC’s general authority to participate in an ordinary LLC under Section 7-12-7.

For these reasons, so long as the Project LLC will serve to promote economic development in Mercer County, the DAMC is authorized to be a member.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. McCuskey". The signature is fluid and cursive, with a long horizontal stroke at the end.

John B. McCuskey
West Virginia Attorney General

Holly J. Wilson
Principal Deputy Solicitor General

S. Hallie Hovey-Murray
Assistant Solicitor General