



State of West Virginia  
Office of the Attorney General

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June 16, 2025

The Honorable Joseph R. Kinser  
Berkeley County Prosecuting Attorney  
390 West South Street, Suite 1100  
Martinsburg, W. Va. 25401

Dear Prosecutor Kinser:

You have asked for an Opinion of the Attorney General concerning local office procedures and holiday benefits for June 19, 2025, "Juneteenth," if Governor Morrisey does not declare the day a state holiday. We understand from public reports that Governor Morrisey will *not* recognize Juneteenth as a state holiday.

This Opinion is being issued under West Virginia Code Section 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." When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence with the Office of the Attorney General.

You have asked the following legal questions:

1. *If the Governor does not recognize Juneteenth as a state holiday, must the Berkeley County Commission close the county courthouse and annexes pursuant to West Virginia Code Section 7-3-2 on that day?*
2. *If the courthouse and annexes must be closed, can the Berkeley County Commission still require employees to work on Juneteenth?*

3. *If the Governor does not recognize Juneteenth, is the day a “legal holiday” within the definition of West Virginia Code Section 2-2-1, which would require the county commission to pay deputy sheriffs overtime pay?*

We conclude that the Berkeley County Commission must close its courthouse and annexes on Juneteenth. The Commission can, in its discretion, still require its own employees to report to work on Juneteenth. It cannot, however, require employees of duly elected county officials to report to work.

Separately, whether Juneteenth is a “legal holiday” under West Virginia Code Section 2-2-1 depends on whether the President issues a proclamation recognizing it as a national holiday or day of observance. If the President does not issue a proclamation recognizing Juneteenth as a day of observance or holiday, the day will not be “legal holiday” for purposes of West Virginia law, and the Commission will not have to pay overtime to deputy sheriffs. But without seeing the language of any presidential proclamation, we cannot yet say whether it meets the requirements set out in Section 2-2-1.

### ***Discussion***

The Berkeley County Commission, like all county commissions, has limited powers. It is “created by statute, and possessed only of such powers as are expressly conferred by the Constitution and legislature, together with such as are reasonably and necessarily implied in the full and proper exercise of the powers so expressly given.” Syl. Pt. 1, *State ex rel. State Line Sparkler of WV, Ltd. v. Teach*, 187 W. Va. 271, 272, 418 S.E.2d 585, 586 (1992); *see generally* W. VA. CONST. art. IX, § 11 (“Powers of county commissions”). Simply, a county commission “can only do those things that are authorized and only in the manner or mode prescribed by law.” *Berkeley Cnty. Comm’n v. Shiley*, 170 W. Va. 684, 685, 295 S.E.2d 924, 926 (1982). Where a county commission does possess power, it has “wide discretion” in execution. Syl. Pt. 1, *Cnty. Comm’n of Greenbrier Cnty. v. Cummings*, 228 W. Va. 464, 466, 720 S.E.2d 587, 589 (2011). Thus, where a county commission has broad express powers, it enjoys substantial implied authority as well. *See, e.g., State ex rel. Farley v. Spaulding*, 203 W. Va. 275, 283, 507 S.E.2d 376, 384 (1998) (finding implied authority to employ security personnel at a statutorily required judicial facility).

Considering these standards, the Commission must close its courthouse and annexes to the public on Juneteenth. The Legislature has entrusted county commissions with the power to regulate the hours that courthouses and annexes are “open to the public.” W. Va. Code § 7-3-2. But “[i]n no case[,] may the county commission” keep courthouses and annexes “open for business on . . . national . . . holidays.” W. Va. Code § 7-3-2; *State ex rel. Morgan v. Miller*, 177 W. Va. 97, 103-04, 350 S.E.2d 724, 731 (1986). In other words, courthouses and annexes must be closed to

the public on national holidays. *See Open for Business*, MERRIAM-WEBSTER.COM, <https://tinyurl.com/4vf9ejwd> (last visited June 11, 2025) (defining “open for business” as “able to be entered and used by customers”). And Juneteenth is a national holiday. On June 17, 2021, President Biden signed the Juneteenth National Independence Day Act into law, which officially made June 19 a federal “legal public holiday.” 5 U.S.C. § 6103(a); S.475, 117th Cong., 135 Stat. 287 (2021-2022).

But the Commission retains discretion over whether to require its own employees to report to work on Juneteenth. The Commission has the power to manage the day-to-day activities of employees under its direct supervision. *See* W. Va. Code § 7-1-3. The Commission is constitutionally and statutorily charged with managing the fiscal affairs and the general business of the county. W. VA. CONST. art. IX, § 11 (establishing duty of county commission over “the superintendence and administration of the internal police and fiscal affairs of their counties”); W. Va. Code § 7-1-3 (providing, in part, that county commissions “shall . . . have the superintendence and administration of the internal police and fiscal affairs of their counties”); W. Va. Code § 7-1-5 (establishing duty of county commissions “to supervise the general management of the fiscal affairs and business of each county”). Necessarily, then, the Commission has the implied authority to carry out its function by hiring, supervising, and setting work conditions for staff in departments that report directly to it, such as maintenance, finance, planning, and human resources. *See Farley*, 203 W. Va. at 283-84, 507 S.E.2d at 384-85 (holding that hiring of security personnel was within constitutional power). This authority includes establishing hours and place of work.

The same does *not* go for employees of independently elected county officials, such as the sheriff, county clerk, circuit clerk, assessor, and prosecuting attorney. These county officials are Constitutional officers with statutory autonomy. *See* W. VA. CONST. art. IX, §§ 1, 9; W. VA. CONST. art. VIII, § 9; W. Va. Code § 7-7-7. Although county commissions and the county officials are “joint employers” of the county officials’ employees, *Amoroso v. Marion Cnty. Comm’n*, 172 W. Va. 342, 346, 305 S.E.2d 299, 303 (1983), the county commission may not “impair or supplant” county officials’ power over their own personnel. *See* Syl. Pt. 6, *Farley*, 203 W. Va. at 277, 507 S.E.2d at 378. County commissions’ authority with respect to officials’ staff is “limited.” *Id.*

Under West Virginia Code Section 7-7-7, county commissions are only authorized to set the overall budgets of county officials’ offices and to serve as the “ultimate authority . . . to confirm or refuse to confirm” officials’ appointees. W. Va. Code §§ 7-7-7(a), (c); *Webster Cnty. Comm’n v. Clayton*, 206 W. Va. 107, 113, 522 S.E.2d 201, 207 (1999). All other personnel decisions are committed to the sound discretion of the county officials. *See, e.g.*, W. Va. Code §§ 7-7-7(d), (h) (expressly reserving salary decisions and terminations to county officials). Just as the Commission has the authority to manage its own employees, so too do the county officials; the authority to operate their own offices is implied in their Constitutional and statutory duties. *See, e.g.*, W. VA

CONST. art. IX, § 1 (creating county prosecutor role); W. Va. Code § 7-4-1 (providing that the prosecuting attorney “shall attend to the criminal business” of the county); *see also Webster Cnty. Comm’n*, 206 W. Va. at 207 n.9, 522 S.E.2d at 113 n.9 (encouraging county commissions to defer to county officials on hiring decisions in recognition of their “esteemed status”). Accordingly, county officials have final authority over whether their staff members are required to report to work on Juneteenth.

Finally, we cannot yet say whether Juneteenth is a “legal holiday” under West Virginia Code Section 2-2-1, such that deputy sheriffs would be entitled to overtime pay. Under West Virginia Code Section 7-14-17e, sheriffs must give deputies who work on “legal holidays” either equal time off or overtime pay. W. Va. Code § 7-14-17e. Juneteenth is not an expressly enumerated state holiday; a legislative effort to add it to the list failed in 2024. *See H.B. 5638* (W. Va. 2024). But West Virginia’s “legal holidays” include, in relevant part, “[a]ny day proclaimed or ordered by . . . the President of the United States as a day of special observance or Thanksgiving, or a day for the general cessation of business.” W. Va. Code § 2-2-1(a)(15). Still, not just any proclamation will do. To create a “legal holiday” through a proclamation or order, the President must make his intention to do so “clear” by “either citing clear authority to create a holiday or using the applicable language of W. Va. Code, 2–2–1, and by expressing a clear intent that the holiday is to be for all citizens.” Syl. Pt. 3, *Mitchell v. City of Wheeling*, 202 W. Va. 85, 86, 502 S.E.2d 182, 183 (1998).

So, for Juneteenth to be a “legal holiday” on which deputy sheriffs are entitled to overtime pay, there must be a Presidential proclamation or order that clearly expresses an intent to create a holiday or a special day of observance that is for all citizens. *Id.* President Donald Trump has not yet issued a proclamation related to Juneteenth, and we can’t predict whether he will. If President Trump does not issue a proclamation naming Juneteenth as a day of observance or holiday, the day will not be a “legal holiday” for West Virginia. Deputy sheriffs will not be entitled to overtime pay. If the President does issue a proclamation, the language of the proclamation will govern. But without that language in hand, we cannot yet say whether the proclamation would create a “legal holiday.”

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***Conclusion***

In sum, the Commission must close its courthouse and annexes to the public on Juneteenth. It can require its direct-reports to come to work on that day, but it cannot require other county officials' employees to do the same. But we cannot yet determine whether the county will be required to pay deputy sheriffs overtime that day.

Sincerely,

A handwritten signature in black ink that reads "John B. McCuskey". The signature is written in a cursive style with a long, sweeping underline.

John B. McCuskey  
Attorney General

Michael R. Williams  
Solicitor General

Holly J. Wilson  
Principal Deputy Solicitor General