



State of West Virginia
Office of the Attorney General

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The Honorable Christina C. Flanigan
Lewis County Prosecuting Attorney
117 Court Avenue, Room 201
Weston, West Virginia 26452

Dear Prosecutor Flanigan:

You requested an Opinion of the Attorney General interpreting West Virginia Code § 7-5-4(a). Specifically, you ask whether all checks and written disbursements of money must be hand-signed when a county's population is less than 50,000.

We are issuing this opinion under 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." 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.

Your letter raised the following legal questions:

- (1) *Does West Virginia Code § 7-5-4 require a County Commission to have an individual commissioner execute, by hand signature, all checks/written disbursements of money?*
- (2) *If a County Commission has a standing order authorizing payroll, does West Virginia Code § 7-5-4 prohibit the use of a signature stamp to authorize payroll checks?*

Although the relevant statutes contain some uncertainties, we ultimately conclude that the president of the county commission and county clerk (or an alternative signatory under West Virginia Code § 7-5-4(b)) must hand-sign an order directing payment in a county with a population of less than 50,000. So where a check or disbursement is the only "order," that check must be hand-signed, too. A standing order for all payroll would not suffice because it would not meet the requirements of West Virginia Code § 7-5-6.

DISCUSSION

West Virginia Code § 7-5-4(a) provides that “[m]oney may not be paid by the sheriff out of the county treasury except upon an order signed by the president of the county commission and the county clerk, and properly endorsed.” Courts would “look first to the statute’s language” when determining how this provision should be applied. *Ancient Energy, Ltd. v. Ferguson*, 239 W. Va. 723, 726, 806 S.E.2d 154, 157 (2017) (cleaned up). When the plain meaning of the text “answers the interpretive question, the language must prevail and further inquiry is foreclosed.” *Id.* (cleaned up).

Here, the statutory language speaks for itself. “[A]n order *signed by* the president of the county commission and the county clerk, and properly endorsed,” is the only listed way to secure money from the county treasury. W. VA. CODE § 7-5-4(a) (emphasis added). “A statute which specifically provides that a thing is to be done in a particular manner, normally implies that it shall not be done in any other manner.” *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 128, 464 S.E.2d 763, 770 (1995). The statute’s blanket “may not” provision separately confirms as much. “The phrase ‘may not’ has exactly the same meaning as ‘shall not.’” *In re Brandt*, 437 B.R. 294, 298 (Bankr. M.D. Tenn. 2010) (cleaned up); *see also Wikle v. Boyd*, 297 So. 3d 1255, 1267 (Ala. Civ. App. 2019) (same). Just as the word “may” implies discretion, *Pioneer Pipe, Inc. v. Swain*, 237 W. Va. 722, 725, 791 S.E.2d 168, 171 (2016), the provision “may not” implies a lack of discretion—that is, a mandatory provision, *see Barr v. Gainer*, 203 W. Va. 379, 383, 508 S.E.2d 96, 100 (1998) (finding Legislature intended “may not” as used in statute had mandatory effect).

Thus, “[a] county of this state has no other mode of paying claims against it except by orders drawn upon the treasury and directed to the sheriff, the exofficio treasurer.” *State ex rel. Damron v. Ferrell*, 149 W. Va. 773, 776, 143 S.E.2d 469, 471 (1965) (interpreting Code § 7-5-4); *cf. Bennett v. Westfall*, 640 F. Supp. 169, 171 (S.D.W. Va. 1986), *aff’d by*, 836 F.2d 1342 (4th Cir. 1988) (referencing Code § 7-5-4 and explaining that plaintiff “[a]pparently . . . joined [county clerk] because of the statutory provision which requires the Clerk of the County Commission to sign off on any order paying monies out of the county treasury”).

“Signing” implies that all the relevant parties will apply their own signatures.¹ *Sign*, BLACK’S LAW DICTIONARY (12th ed. 2024). Were that not clear enough, Section 2-2-10(a)(15)

¹ In *Gerhardt v. Board of Canvassers of Berkeley County*, a county clerk injured his shoulder, so he began individually applying a stamped copy of his signature on ballots; the Court found that stamp to be an acceptable “signature.” 113 W. Va. 214, 214, 167 S.E. 130, 131 (1932). *Gerhardt* is likely the best authority for the notion that stamped signatures are generally enough—but we ultimately find it distinguishable. As explained below, Section 7-5-4 expressly addresses the circumstances in which mechanical devices may be used, while the statute at issue in *Gerhardt* did not. That distinction matters. If *Gerhardt* applied to Section 7-5-4, then the statute’s “mechanical device” exception described below would become surplusage. “If possible, the court must give effect to every word, clause, and sentence; it must not read a statute so as to render any part inoperative, superfluous, or insignificant.” *In re A.P.*, 245 W. Va. 248, 254, 858 S.E.2d 873, 879 (2021) (cleaned up).

says that, “when the signature of any person is required, it must be in his or her own proper handwriting, or his or her mark, attested, proved, or acknowledged.”²

A single exception to this non-discretionary signature requirement was written into the code, but that exception only confirms that Lewis County must apply wet-ink signatures to its payment orders. “In counties having a population in excess of 50,000 ...[,] such signatures may be made by means of such mechanical or electrical device as the county court may select.” W. VA. CODE § 7-5-4(a). But the familiar maxim of *expressio unius est exclusio alterius*—the express mention of one thing implies the exclusion of another—applies here. Syl. pt. 3, *Manchin v. Dunfee*, 174 W. Va. 532, 327 S.E.2d 710 (1984). When the Legislature carved out this singular exception for larger counties, the Legislature impliedly excluded any other exception to the general rule. Because Lewis County has a population smaller than 50,000, it cannot take advantage of the “mechanical device” exception.

We also conclude that the standing order your request contemplates would not comply with the statute. We recognize that the statute does not require the “order” and the negotiable instrument that renders payment to the third-party payee to be one and the same. For instance, in *263 Towing, Inc. v. Marcum Trucking Co.*, 222 W. Va. 80, 84-85, 662 S.E.2d 522, 526-27 (2008), the Court seemed to describe a process in which a pay order from the commission and clerk was separate from the check ultimately issued by the sheriff. *See also* W. VA. CODE § 7-5-4(d) (referring to “warrant[s], order[s], or check[s]” as distinct items).

But separating “orders” from “checks” would still not permit the “standing order” approach. Section 7-5-6 describes the necessary elements of a pay order, and those orders must identify a specific sum paid on specific date to a specific payee based on an identified appropriation. Likewise, Section 7-5-5 addresses payments made at “stated intervals,” like payroll, and that section similarly contemplates an individual pay order for each payment due. A standing order would not seem to meet any of these requirements.

In other words, a standing order may lawfully pre-authorize the disbursement of payroll as a category of expenditure, relieving the commission of the need to vote on each individual paycheck. But a standing order cannot override or waive the statutory requirements for individual pay orders.

* * *

Ultimately, West Virginia Code § 7-5-4(a) requires the president of the county commission and the county clerk, or their alternative signatories, to sign the order by hand. Although counties

² Section 2-2-10(a)(15) also contemplates electronic signatures. But the provisions in Section 7-5-4 governing “mechanical” or “electrical” signatures—which were amended by the Legislature as recently as 2025—once again explain why we also do not believe the provisions of the Uniform Electronic Transactions Act apply here. *See Benjamin v. Walker*, 237 W. Va. 181, 192, 786 S.E.2d 200, 211 (2016) (acknowledging that the provisions of a more specific statute can except that statute from the scope of the UETA). Section 7-5-4’s more specific provisions should govern over more general ones. *See Newark Ins. Co. v. Brown*, 218 W. Va. 346, 351, 624 S.E.2d 783, 788 (2005).

with populations of more than 50,000 are exempt from the hand signature requirement, smaller counties are not.

The Legislature could end the need for hand signatures by simply removing the population clause (“In counties having a population in excess of 50,000 as shown by the last preceding federal census”) from Section 7-5-4. Given the increasing prevalence of electronic signatures and common use of non-handwritten signatures in at least some West Virginia counties, such an amendment seems advisable. The Attorney General’s Office stands ready to assist counties in enlisting the Legislature’s help if counties like yours agree that handwritten signatures are an unjustified burden in all West Virginia counties, big and small. Until then, the language of the statute controls.

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
West Virginia Attorney General

Michael R. Williams
Solicitor General