



State of West Virginia
Office of the Attorney General

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April 29, 2026

The Honorable Rebecca L. Miller
Hampshire County Prosecuting Attorney
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Dear Prosecutor Miller:

You have asked for an Opinion of the Attorney General about the Hampshire County Commission's lawful scope of expenditures for educational scholarships and public participation incentives under West Virginia law. This Opinion is issued 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." To the extent this Opinion relies on facts, it depends solely on the factual assertions in your correspondence and discussions with the Attorney General's Office.

Per your letter, the Hampshire County Commission is considering three initiatives. *First*, a potentially recurring agricultural "legacy farm" scholarship contribution to a local community foundation to further endow an existing scholarship fund for students to pursue post-secondary education in agriculture-related fields, all to promote farmland preservation and sustain legacy family farms. *Second*, an annual allocation to a scholarship fund administered by a qualified community foundation to assist active volunteer and employed firefighters and EMS personnel with tuition for postsecondary or certification programs given certain conditions. *Third*, offering modest-value gift cards to promote robust participation in public surveys.

With these facts in mind, your letter raises four legal questions:

1. May the Hampshire County Commission lawfully appropriate public funds to a community foundation for the purpose of establishing or expanding a scholarship fund benefiting local students studying agriculture or related fields, when that scholarship serves a stated public goal of farmland preservation and local farm viability?

2. May the Hampshire County Commission lawfully appropriate recurring public funds to a community foundation for scholarships or tuition reimbursement to volunteer emergency services personnel (fire or EMS), conditioned on continued volunteer service in the county?
3. May such a scholarship program lawfully include county-employed EMS personnel, provided the participation is conditioned prospectively on educational advancement and continued service, without running afoul of the prohibition on extra compensation for public employees?
4. Does the public purpose doctrine, or any provision of the West Virginia Code, permit the Hampshire County Commission to use public funds to purchase modest-value gift cards as incentives for residents to complete county-administered surveys or participate in county-related programs of high public importance, or would such incentives constitute an improper gift of public funds?

In short, the Hampshire County Commission lacks statutory authority to create a scholarship fund for agricultural purposes. And while specific and broad statutory authorizations allow it to create a scholarship fund for volunteer firefighters and EMS personnel given certain conditions, such a scholarship for current, contractual public employees is likely barred by the extra-compensation clause. Finally, the county commission's ability to distribute modest-value gift cards will depend on their specific purposes, which are not readily apparent in your letter.

DISCUSSION

I. The Hampshire County Commission Cannot Lawfully Administer an Agricultural Scholarship Program.

You first ask whether the Hampshire County Commission may lawfully administer an agricultural scholarship program when that scholarship serves a stated public goal of farmland preservation and local farm viability. It may not.

County commissions are “created by statute,” and only possess “powers as are expressly conferred by the Constitution and legislature,” and “reasonably and necessarily implied” to exercise those powers. *Syl. pt. 1, State ex rel. State Line Sparkler of WV, Ltd. v. Teach*, 187 W. Va. 271, 418 S.E.2d 585 (1992) (cleaned up). This Office has explained that “[i]f any reasonable doubt exists as to whether a county commission has a power, the power must be denied.” *Off. of the W. Va. Att’y Gen., Opinion Letter Concerning County Commission Authority to Approve an Assignment of Lease* (June 18, 2024), 2024 WL 3380828, at *4 (cleaned up) (quoting *syl. pt. 1, McCallister v. Nelson*, 186 W. Va. 131, 411 S.E.2d 456 (1991)).

Your letter has not referenced any “[c]lear[] and unmistakabl[e]” power of the county commission to issue scholarship funds for agricultural purposes. *Express*, BLACK’S LAW DICTIONARY (12th ed. 2024). On independent review, we can find no express provision in the West Virginia Constitution or Code that confers scholarship grant-making authority on county commissions. So, the question is whether this power is reasonably and necessarily implied within another authorization.

One power delegated to county commissions is the administration of the “fiscal affairs of their counties.” W. VA. CONST., art. IX, § 11. Though county commissions typically wield “wide discretion” in exercising this power, it can only be used as “prescribed by law.” *Id.*; *Cnty. Comm’n of Greenbrier Cnty. v. Cummings*, 228 W. Va. 464, 469, 720 S.E.2d 587, 592 (2011) (cleaned up). So, the West Virginia Legislature must independently authorize the county commission to expend funds for specific purposes. *See, e.g., Cummings*, 228 W. Va. at 469-70, 720 S.E.2d at 592-93 (evaluating county commission budgets under West Virginia Code § 7-7-7); *State ex rel. Farley v. Spaulding*, 203 W. Va. 275, 282-84, 507 S.E.2d 376, 383-85 (1998) (allowing county commissions to hire police personnel in part under West Virginia Code §§ 7-3-2, 7-1-3m).

Although the county’s fiscal powers are broad, they are not unlimited. Under the county commission’s fiscal power, the Legislature authorizes county commissions to expend funds on many things such as the “establishment and regulation of” public areas like “roads, ways, streets,” “bridges, public landings, ferries[,] and mills.” W. VA. CODE § 7-1-3. They may expend funds securing public services like sewage, radio, and garbage. *See id.* §§ 7-1-3a to 7-1-3rr. They can set their own budgets. *Id.* § 7-7-7. They can provide emergency services. *Id.* § 7-15-4. And they can even establish farmland protection funds to buy land and easements. *Id.* §§ 8A-12-2, 8A-12-12. But the Legislature has not authorized county commissions to expend funds on agricultural scholarship programs.

The scholarship you describe appears to fall within the remit of the Commissioner of Agriculture. The West Virginia Constitution gives the power of administering agricultural affairs to the West Virginia Department of Agriculture. *See* W. VA. CONST., art. VII. The Commissioner of Agriculture is responsible for “[d]evis[ing] means of advancing the agricultural interests of the state.” W. VA. CODE § 19-1-4(a). The Commissioner has the “authority to call upon any ... county[] to cooperate in promoting the agricultural interests of the state.” *Id.* So, the Commissioner of Agriculture is responsible for agricultural initiatives in West Virginia—not county commissions.

By the same token, when creating scholarship programs, the Legislature typically uses explicit language in setting requirements and assigning administering bodies. For instance, the Legislature created the Hope Scholarship Program and committed its administration to the Board of Education with specific requirements. *See generally* W. VA. CODE § 18-31-5. Likewise, the Promise Scholarship Program is administered by the West Virginia Higher Education Policy Commission with detailed eligibility requirements. *See generally id.* §§ 18C-7-5, 18C-7-6. The Legislature further lists many such state scholarship programs like the Underwood-Smith Teacher Scholarship Program, the West Virginia Higher Education Program, and the Engineering, Science, and Technology Scholarship Program. *See, e.g., id.* § 18C-1-1(d)(1) to (14).

But we can find no legislative authorizations to county commissions to administer agricultural scholarships. And in the presence of authorizations like those above, we “should assume” the Legislature’s silence on agricultural scholarships is “intentional.” *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 128, 464 S.E.2d 763, 770 (1995). Indeed, “[e]xplicit direction for something in one provision, and its absence in a parallel provision, implies an intent to negate it in the second context.” *Gibson v. Northfield Ins. Co.*, 219 W. Va. 40, 47, 631 S.E.2d 598, 605 (2005) (cleaned up). We must then “exclude from operation those items not included in the list of elements that are given effect expressly by statutory language.” *State ex rel. Roy Allen S. v. Stone*, 196 W. Va. 624, 630 n.11, 474 S.E.2d 554, 560 n.11 (1996). County commissions thus lack the authority to make agricultural scholarships.

That the scholarship fund would serve a stated public goal of farmland preservation and local farm viability is of no moment. An appropriate public purpose is sometimes a necessary (but not sufficient) condition for the expenditure of public funds, W. VA. CONST., art. X, § 6, and “the promotion, at public expense, of education beyond the age of sixteen and even in colleges and universities is regarded as fulfillment of a public purpose,” *State ex rel. Hughes v. Bd. of Educ. of Kanawha Cnty.*, 154 W. Va. 107, 118, 174 S.E.2d 711, 718 (1970). But even where a proposed action serves a valid public interest, a county commission may “do only such things as are authorized by law, and in the mode prescribed.” *T. Weston, Inc. v. Mineral Cnty.*, 219 W. Va. 564, 569, 638 S.E.2d 167, 172 (2006) (cleaned up).

This conclusion is reinforced by this Office’s past opinions. In 2015, West Virginia Conservation Districts asked whether they may award agricultural scholarships using public funds. *See* Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Legal Authority to Award Scholarships Using Public Funds (Jan. 20, 2015), 2015 WL 336264. Just as here, “[w]e [could] not find among the Districts’ enumerated powers the authority to award the scholarships.” *Id.* at *2. Like conservation districts, we have affirmed many times that county commissions may not use powers beyond the scope of authorizations necessarily implied in the Code. *See, e.g.*, Off. of the W. Va. Att’y Gen., Opinion Letter Concerning County Commission Authority to Review Fire Department Finances (Sept. 4, 2025), 2025 WL 2655054.

In sum, the Hampshire County Commission lacks authority to fund an agricultural scholarship despite its intended beneficial public purposes. And because we have determined that the county does not have the power to fund these scholarships, we need not address whether these scholarships could be routed through a community foundation.

II. Hampshire County May Create an Emergency Services Scholarship for Fire Fighters and EMS Personnel Conditioned on Continued Volunteer Service.

You also ask whether the Hampshire County Commission may fund an EMS scholarship or tuition reimbursement for volunteer firefighters and EMS personnel conditioned on continued volunteer service. It may with proper fund distribution oversight.

a. Volunteer Firefighting and EMS Scholarships

Your letter mentions plans for an EMS scholarship or tuition reimbursement for volunteer firefighters and EMS personnel. Unlike the limited power to administer agricultural scholarships, the Legislature provides county commissions authority to train volunteer fire fighters and EMS personnel.

Start with volunteer fire fighters. A county commission is “authorized and empowered to create a hazardous material accident response team” including “members of the fire departments.” W. VA. CODE § 7-1-3aa. “The commission is [further] authorized to ... expend its own funds for ... training of the members of the team.” *Id.* The operation of these fire departments serves “the general benefit of the public in the prevention of fires,” “victim rescue, [and] cleanup of debris or hazardous materials.” *See id.* § 7-1-3d(b) (authorizing county commissions to allocate and receive funds toward these purposes). Consistent with those aims, the Legislature allocates resources specifically for training fire personnel to accomplish their mission. *See id.* § 15A-11-9.

Your letter implies that an educational scholarship for volunteer fire companies would incentivize volunteer firefighters to prevent, fight, and clean up after fires. Of course, any scholarship should only be used for training purposes consistent with these public purposes. *See* Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Teacher Trainee Scholarships (July 18, 1963), 1963 WL 66344, at *2 (not allowing appropriations for college scholarships that don’t necessarily benefit the public school system, *i.e.*, scholarships for purely private purposes); Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Medical Student Scholarships (Aug. 12, 1974), 1974 WL 174315, at *6-8 (scholarship programs must serve the stated public purpose). So, a scholarship or tuition reimbursement for training purposes is within your county commission’s authority. *See* Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Police Training Speech Course (Sept. 1, 1944), 1944 WL 28320, at *1-2 (allowing policemen to receive educational reimbursements for a speech course related to their duties).

Our conclusion is confirmed by statutory provisions that empower county commissions to “render financial aid to any one or more public fire protection facilities in operation in the county for the general benefit of the public in the prevention of fires.” W. VA. CODE § 7-1-3d(b). We have explained that county commissions “ha[ve] statutory authority to allocate in [their] budget[s] public funds for use in rendering financial aid to volunteer fire companies.” Off. of the W. Va. Atty. Gen., Opinion Letter Concerning County Commission Aid to Fire Fighting Companies (Apr. 3, 1968), 1968 WL 94102, at *2. Providing training and financial retention incentives to these companies by way of a scholarship program would seem to be a straightforward form of financial aid. Indeed, scholarships are often described as “financial aid.” *See Scholarship*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“[m]oney or other aid granted to help a student pursue educational achievement; esp., a discrete instance of financial aid to someone who pursues a course of study, often in an institution of higher learning.—Also termed (in sense 4) *financial aid*.”).

Now for volunteer EMS personnel. County commissions have “complete authority for the provision of emergency ambulance service[s]” within their boundaries. W. VA. CODE § 7-15-18. They are charged with the responsibility to “ma[k]e available to all the residents of the county”

“emergency ambulance service[s].” *Id.* § 7-15-4. Indeed, the Legislature has authorized grants specifically for “training of emergency medical services providers and personnel,” giving “priority” to “volunteer emergency medical service providers.” *Id.* § 16-4C-24(b).

“[L]iberally constru[ing]” this provision “to accomplish its purpose” as the Legislature commands, W. VA. CODE § 7-15-18, scholarship funds for volunteer emergency service personnel appear to be permissible. These training scholarships further the goal of making emergency medical services available to all residents of the county by incentivizing volunteers to continue their volunteer service. The scholarship funds are therefore within the county commission’s general power to administer the “fiscal affairs” of the county. W. VA. CONST., art. IX, § 11.

We also can find no prohibition on the county commission’s conditioning scholarships on continued volunteer service. On the contrary, the West Virginia Code is replete with legislative precedent for doing so. For example, the STEM Scholarship requires recipients to work full-time in a STEM related field for each year the scholarship is received, otherwise the individual must repay the funds. W. VA. CODE §§ 18C-6-4(a)(2)(A) to (B). The Legislature applies the same concept in the way volunteer firefighters receive tax credits. *Id.* §§ 11-13jj-1, 11-13jj-3(b). And the Supreme Court of Appeals of West Virginia has upheld a law that granted sabbatical leave to pursue further graduate work with intermittent salary conditioned on returning to teach. *See State ex rel. W. Va. Bd. of Educ. v. Sims*, 139 W. Va. 802, 808-09, 81 S.E.2d 665, 668-69 (1954).

We therefore conclude that the proposed scholarship may be conditioned on continued volunteer service—indeed, the conditions reconfirm that the scholarships serve an appropriate public purpose.

b. Fund Distribution

Your letter suggests that a local community foundation will distribute the county’s scholarship funds. This approach is possible with some additional oversight.

At the outset of this inquiry, we recognize that the West Virginia Constitution prohibits the State from taking on the “debts or liabilities of any county, city, township, corporation[,] or person.” W. VA. CONST., art. X, § 6. We have explained this means that “the State may not permit a municipality to give aid to, or become a stockholder in, a private corporation involved in private pursuits.” Off. of the W. Va. Att’y Gen., Opinion Letter Concerning City Appropriations to Certain Public Agencies and Nonprofit Corporations (Mar. 18, 1980), 1980 WL 119407, at *6. Indeed, taxes cannot “be exercised in aid of enterprises strictly private.” *Citizens’ Savings & Loan Ass’n v. City of Topeka*, 87 U.S. (20 Wall.) 655, 656 (1874). So, public funds must be used for “public purposes.” *State ex rel. W. Va. Hous. Dev. Fund v. Copenhagen*, 153 W. Va. 636, 644-45, 171 S.E.2d 545, 550 (1969). And as explained, firefighting and EMS services support public purposes. *See supra* Section II.a.

To distribute funds for those purposes, a county commission should exercise caution not to “expend [the] money ... [i]n an unauthorized manner.” W. VA. CODE § 11-8-26. County commissions have two avenues to properly allocate these funds.

First, county commissions are “authorized and empowered to create and establish ... special funds” for firefighting and EMS service scholarships. W. VA. CODE § 7-1-9; *see supra* Section II.a. (advancing provisions of chapter seven). These special accounts are funded by the county commission’s tax levies or through “unexpended or surplus moneys in the county general fund.” W. VA. CODE § 7-1-9. And such expenditures “shall be made only for the purpose for which the special fund was created and established.” *Id.* Special funds provide the most direct way to fund the scholarship.

Second, county commissions may allocate funds to other agencies and private nonprofit corporations given greater oversight. Off. of the W. Va. Att’y Gen., Opinion Letter Concerning County Commission Aid to Volunteer Fire Fighting Companies (Apr. 3, 1968), 1968 WL 94102, at *3. “Generally, no local fiscal body ... which levies taxes may transfer any of its public funds to another agency for disbursement” without “express authority” and “proper disbursement and audit controls.” *Id.* at *4. We initially applied that rule by requiring disbursements “item by item, upon the specific orders of the county [commission] ... after presentment to and the approval by the county [commission].” *Id.* We believed this standard would “assure that such funds are used for authorized public purposes.” *Id.*

On further consideration, we explained that “[r]eleasing funds on an item-by-item basis as described in that opinion may not be appropriate or feasible in every instance.” Op. Letter, 1980 WL 119407, at *8. Since then, some municipalities continue to require itemized requests, while others “find it more effective to release the appropriation in a lump sum and then conduct periodic audits to determine that the appropriation is being spent for [the] public purpose.” *Id.* The touchstone requirement now is that a government entity must “be able to determine that the money is spent for [the] public purpose.” *Id.*

Your letter does not describe the precise nature of the “community foundation” that will disburse the funds. Assuming the “community foundation” is a private nonprofit organization, *see* W. VA. CODE § 44-6A-2, the county commission may disburse funds “provided that the State Tax Department is convinced” that the commission’s “auditing procedures are such that [it] will be able to determine that the money is spent for” volunteer firefighting and EMS services, Op. Letter, 1980 WL 119407, at *8.

Altogether then, the Hampshire County Commission may create an EMS scholarship for volunteer fire fighters and EMS personnel for training purposes conditioned on continued volunteer service. In doing so, the Commission should follow proper fund disbursal oversight.

III. An EMS Educational Reimbursement Runs Afoul the Prohibition on Extra Compensation for Current Public Employees.

You next ask whether the EMS scholarship scheme above may include employed EMS personnel and be conditioned prospectively on continued employment and educational advancement without running afoul the prohibition on extra compensation for public employees. The Legislature has not authorized scholarships for current EMS employees that exceed the extra-compensation clause's prohibitions.

We begin with the Legislature's authorizations. When a government entity provides reimbursement for employee educational expenses as part of their training, we have opined that "authority for such expenditures may be implied." *Off. of the W. Va. Att'y Gen., Opinion Letter Concerning Reimbursement of Educational Expenses to State Employees (July 2, 1993)*, 1993 WL 361759, at *6. They do not require "specific statutory authority," "nor a special appropriation for payment thereof." *Id.* To ascertain this implied authority, we instead look to "what purpose the expenses [will be] incurred, and whether the [department's] statutory mission will be directly advanced by the education and training." *Id.* As shown, educational reimbursements of this type incentivize firefighters and EMS personnel to further their statutory mission. *See supra* Section II.a.

But this implied authorization is not unlimited. "[W]e would draw the line at those educational expenses calculated to enable a person to become qualified for a different position, or help him or her obtain employment in another field." *Op. Letter, 1993 WL 361759*, at *6. Such education and training also cannot transform a temporary employee into a permanent one. *Id.* In other words, "to be reimbursable," "[e]ducation or training expenses" "must be directly related to maintaining or improving the public employee's performance of his or her existing responsibilities." *Id.* So, the scholarship must be attached to current firefighting or EMS duties.

On to extra compensation. The West Virginia Constitution and Code provide that "[n]o extra compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract made." W. VA. CONST., art. VI, § 38; *see also* W. VA. CODE § 6-7-7. This prohibition serves to "safeguard the independence, the security, and the efficiency" of public offices. *Harbert v. Harrison Cnty. Ct.*, 129 W. Va. 54, 62, 39 S.E.2d 177, 185 (1946). It also "assures the people that those who serve them as public officers shall give their services during their terms for the amount of compensation for which they were willing to serve." *Delardas v. Cnty. Ct. of Monongalia Cnty.*, 155 W. Va. 776, 781, 186 S.E.2d 847, 851 (1972) (cleaned up).

We have not previously considered whether firefighters and EMS personnel are "public officer[s], agent[s], servant[s], or contractor[s]." W. VA. CONST., art. VI, § 38. But the Clause has been interpreted to apply to any public employee, including a variety of other public service professionals like county health officers, *Schwartz v. Cnty. Ct. of Hancock Cnty.*, 136 W. Va. 626, 639, 68 S.E.2d 64, 71 (1951), county school superintendents, *syl. pt. 1, Jackson v. Bd. of Educ. of Kanawha Cnty.*, 128 W. Va. 154, 35 S.E.2d 852 (1945), and teachers, *Off. of the W. Va. Att'y Gen., Opinion Letter Concerning Compensating School Employees for Additional Duties (Aug. 14,*

2024), 2024 WL 4357393, at *2. So, firefighters and EMS personnel are covered public employees. *See* Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Giving State Employees Extra Compensation (Aug. 17, 2015), 2015 WL 4977862, at *4 (applying the clause to the “pay of public employees” without distinction).

The prohibition on extra compensation begins when “the [S]tate has purchased the person’s set services at an agreed-upon price.” Op. Letter, 2015 WL 4977862, at *4. After that, counties “may not pay more for the services contracted for or rendered.” *Id.* In other words, “contractual employees cannot receive extra compensation after the[ir] contract is made, [and] non-contractual (at-will) employees, cannot receive extra compensation after their services have been rendered.” Op. Letter, 2024 WL 4357393, at *2 (cleaned up); W. VA. CONST., art. VI, § 38. Otherwise, counties would be “paying the employee a bonus simply for having come to work.” Op. Letter, 2015 WL 4977862, at *4 (cleaned up).

Of course, that bar is not absolute. We see three exceptions.

First, the Clause does not prohibit “bargained-for increases in compensation that occur prior to the start of the work.” Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Contractual Performance Incentives (Oct. 1, 2013), 2013 WL 5508581, at *2. For example, annual salary adjustments based on years of service are not impermissible bonuses. Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Incremental Salary Increases (June 27, 1990), 1990 WL 596840, at *2. Based on the language in your letter, it appears that this may be the case for “prospective” contractual employees yet to enter the workforce and non-contractual, at-will employees. *See* Op. Letter, 2015 WL 4977862, at *6-7; *see also* Op. Letter, 2024 WL 4357393 (describing how these timing requirements apply different to contractual and non-contractual employees). So a scholarship program would be permissible for those employees.

Second, the bar on extra compensation does not hinder consideration that “exist[s] separately and apart from[] the salary of” the employee. *State ex rel. Patteson v. Sims*, 136 W. Va. 106, 119, 65 S.E.2d 730, 737 (1951). For example, retirement pensions are not extra compensation. *Campbell v. Kelly*, 157 W. Va. 453, 472-73, 202 S.E.2d 369, 381 (1974). And we have explained that statutory sick leave is excepted. Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Proposed Sick Leave Plan for State Employees (Aug. 29, 1978), 1978 WL 33959, at *2-3. But we’ve narrowed this exception to those two circumstances, so a scholarship program would not constitute “separate” consideration. *See* Op. Letter, 2015 WL 4977862, at *4 n.4.

Third, the Clause does not “forbid the [county commission] from granting contemporaneous salary increases to employees who are newly expected to perform additional services.” Op. Letter, 2013 WL 5508581, at *3. Where new duties “are not mere incidents of the [employment], but embrace a new field, and are beyond the scope or range of the [employment] as it ... existed,” increased compensation does not violate the clause. *Springer v. Bd. of Educ. of Ohio Cnty.*, 117 W. Va. 413, ___, 185 S.E. 692, 694 (1936). When an employee “performs work *outside* his duties,” *i.e.*, acting in a “capacity outside his regular office hours” to further an additional duty, the Clause is not violated. Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Reimbursement for Services and Travel Expenses (July 3, 1947), 1947 WL 30381, at

*2-3. So, the new duties cannot be purely incidental to previous duties. *Delardas*, 155 W. Va. at 789, 186 S.E.2d at 855-56.

Given the facts that you describe in your letter, a scholarship conditioned on educational advancement and further certification would fall into this third category and thus be constitutional even as to current employees. Educational advancement demands that current employees “embrace a new field” “beyond the scope or range” of their current employment. *Springer*, 117 W. Va. at ___, 185 S.E. at 694. Assuming the scholarship covers classes that would stretch current employees to exercise new duties that are not incidental to their current positions, the scholarships on top of current salaries would be constitutional. In that same vein, if the scholarship is for education wholly outside regular office duties in addition to present duties, the scholarship does not violate the Clause.

But this conclusion creates a separate problem: the only scholarships for current employees that the *Constitution* allows also happen to be the type of scholarships that current *statutes* do not authorize. Recall that the Legislature’s authorizations for employee training require it to be directly related to existing duties regardless of the constitutional analysis. So, a statutory gap exists because the Legislature has not authorized educational reimbursements in the only constitutionally permissible circumstances. At best, the Legislature authorizes funds for continued employment and training directly related to present duties. *Op. Letter*, 1993 WL 361759, at *6; *see supra* Section II.a. Current employees have presumably already accomplished their work and set their service price. Giving them an additional scholarship would be a bonus simply for coming to work as they already agreed. So, the Legislature has not authorized the scholarships allowed by the West Virginia Constitution’s extra-compensation clause for current EMS employees.

The Hampshire County Commission may not create an EMS educational reimbursement fund for currently employed, contract fire fighters and EMS personnel, as such a program would either run afoul of the prohibition on extra compensation for public employees or exceed the authority that the Legislature has granted the county to create training programs.

IV. Hampshire County Might Have Authority to Distribute Modest-Value Gift Cards in Exchange for Public Purposes.

Finally, you ask whether the law permits the Hampshire County Commission to use public funds to purchase modest-value gift cards as incentives for residents to complete county-administered surveys or participate in county-related programs of high public importance. You ask specifically whether such an incentive would be an improper gift of public funds. The short answer is maybe.

We first address your more specific question. This Office has long defined a gift as “a voluntary transfer of [] property by one to another, without any consideration or compensation therefor.” *Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Prizes and Awards of Reasonable Value* (Feb. 16, 1967), 1967 WL 93385, at *3 (cleaned up). “An appropriation by the Legislature of public revenue for a purely private purpose is beyond its legitimate powers of legislation and, for that reason, is null and void.” *State ex rel. Bd. of Governors of W. Va. Univ. v.*

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Sims, 140 W. Va. 64, 72, 82 S.E.2d 321, 326 (1954). And “[t]his prohibition applies not only to the Legislature, but also to municipalities” because “[m]unicipalities derive all their power as well as their existence from the Legislature.” Off. of the W. Va. Att’y Gen., Opinion Letter Concerning Use of Funds from Special Excess Levies (Mar. 31, 2017), 2017 WL 1377945, at *3 (cleaned up). Just as “the Legislature lacks the ability to levy taxes for a private purpose, municipalities must likewise lack that power.” *Id.*

If, however, the modest-value gift cards are made for legitimate public interests, Op. Letter, 1967 WL 93385, at *3, and tied to legitimate expenditure authorizations, *see supra* Section I, then there may be a way to use public funds to distribute modest-value gift cards. For example, the United States Government Accountability Office has allowed gift card distribution in response to public surveys related to telecommunications issues. *See* Nat’l Telecomm. & Info. Admin., B-310981 (Comp. Gen. Jan. 25, 2008), <https://tinyurl.com/3upam8re>.

You say that the gift cards would incentivize public participation in county-administered surveys providing valuable information for “programs of high public importance.” At first blush, it does not appear that this would violate the bar on public gifts, as the participation in the survey provides the necessary “consideration.” But we are left without the specific public purposes these gift cards serve and therefore unable to offer a definitive endorsement.

* * *

The Hampshire County Commission lacks statutory authority to create a scholarship fund for agricultural purposes. It can create a scholarship fund for volunteer firefighters and EMS personnel given certain conditions. But training-focused scholarships—the only scholarships that the Legislature seems to have allowed—would run afoul of the West Virginia Constitution’s extra-compensation clause when it comes to *current, contract-based* public employees. Finally, the county commission’s ability to distribute modest-value gift cards depends on their purposes and statutory authorizations.

Sincerely,



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