



State of West Virginia
Office of the Attorney General

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June 10, 2026

The Honorable Rebecca L. Miller
Hampshire County Prosecuting Attorney
Hampshire County Courthouse
50 South High Street
Romney, West Virginia 26757

Dear Prosecutor Miller:

You previously requested an opinion from the Attorney General regarding certain scholarship and gift-card programs. In response, this Office issued an opinion explaining the Hampshire County Commission's power to issue certain scholarships and outlined relevant legal principles for gift-card programs. Based on a lack of information provided, however, we were unable to analyze the exact contours of the Commission's ability to issue gift cards in exchange for information gleaned from public survey participation.

You have since requested a "more definite opinion" from the Attorney General about the Hampshire County Commission's lawful scope of expenditures for gift cards for public purposes. This Opinion is issued under West Virginia Code § 5-3-2, and supplements the previous opinion dated April 29, 2026. As always, this Opinion depends solely on the factual assertions in your correspondence and discussions with the Attorney General's Office.

Your follow-up letter explains that the Hampshire County Commission is considering distribution of gift cards in exchange for completed public surveys on proposals pending before the Commission. Specifically, the Commission seeks input from residents on a proposed electric transmission line—the MidAtlantic Resiliency Link (MARL). Though this transmission line is the most pressing issue before the Commission, you also want to know whether gift cards can be used for participation in surveys on a variety of policy issues, including land-use, economic development, substance-abuse treatment and prevention, public recreation, and park development.

With these additional details, your letter raises again the question:

1. Does the public purpose doctrine, or any provision of the West Virginia Code, permit the Hampshire County Commission to use public funds to purchase 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?

Based on the additional details you have provided we now conclude that the Hampshire County Commission can issue gift cards in exchange for information on the public issues described in your letter.

DISCUSSION

I. Foundational Principles

To begin, some table-setting of the relevant legal standards will help.

You will recall that an analysis of county commission “powers” begins with what “the Constitution and legislature” “expressly” or “reasonably and necessarily impl[y].” 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). And county commissions have the power to administer the “fiscal affairs of their counties” as “prescribed by law.” W. VA. CONST. art. IX, § 11.

A limit on that fiscal power is the West Virginia Constitution’s prohibition on the government’s taking on “debts or liabilities.” W. VA. CONST., art. X, § 6. Grounded in this prohibition is an understanding that “[a]n appropriation by the [county commission] 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. Sims*, 140 W. Va. 64, 72, 82 S.E.2d 321, 326 (1954); *see also* 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 (applying the standard to county commissions). So, county commissions cannot make a “free donation,” or gift, “out of the public treasury.” *See Yates v. Taylor Cnty. Ct.*, 47 W. Va. 376, ___, 35 S.E. 24, 29 (1900) (Dent, J., concurring); *see also* 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 (defining “gift” as “a voluntary transfer of [] property by one to another, without any consideration or compensation therefor.” (cleaned up)).

All that is not to say that West Virginia places a blanket prohibition on distributing public funds to individuals. These distributions happen every day. The State makes payments to eligible students for scholarships, *see, e.g.*, W. VA. CODE §§ 18C-7-1 to 18C-7-7, welfare benefits for needy families, *see, e.g., id.* §§ 9-9-1 to 9-9-22, pensions for former public employees, *see, e.g., id.* §§ 5-10-1 to 5-10-55, and cash bonuses to veterans, W. VA. CONST. amends. VI & VII. The prohibition is on using public funds for “purely private purposes,” not a private person. Syl., *Woodall v. Darst*, 71 W. Va. 350, 77 S.E. 264 (1912), *abrogated on other grounds by State ex rel. Sahley v. Thompson*, 151 W. Va. 336, 343, 151 S.E.2d 870, 874 (1966).

This Office—and the Supreme Court of Appeals of West Virginia—have not considered whether gift cards in exchange for public survey information is permissible. However, we find

this situation analogous to other times when the government gives a benefit (like cash prizes or awards) in consideration for a reciprocal action (participation in a government activity). In those situations, we have “generally recognized as valid” appropriations to individuals “when there is specific legislative authority for the granting of such prize or award, and a recognizable public purpose being served.” Op. Letter, 1967 WL 93385, at *4.

Several federal examples applying this kind of standard come to mind. 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>, prizes in drawings connected to customer satisfaction surveys, Nat’l Telecomm. & Info. Admin., B-286536 (Comp. Gen. Nov. 17, 2000), <https://tinyurl.com/592xa99z>, twenty-five dollar prizes as Army recruiting gifts, Nat’l Telecomm. & Info. Admin., B-230062 (Comp. Gen. Dec. 22, 1988), <https://tinyurl.com/4su2r4b4>, and refreshments or light meals to incentivize focus group participation, Nat’l Telecomm. & Info. Admin., B-304718 (Comp. Gen. Nov. 9, 2005), <https://tinyurl.com/8kmxw87y>.

Putting the pieces together, a county commission may distribute gift cards in exchange for public survey information when they are (a) “specifically authorized by the Legislature; (b) there have been public funds appropriated therefor by the Legislature; [and,] (c) there is some genuine ‘public purpose’ being served.” Op. Letter, 1967 WL 93385, at *5.

II. Authorization, Appropriation, and Purpose

Your follow-up letter specifically asks whether the Commission has authority to exchange gift cards for public survey information about the MARL Project, substance abuse treatment and prevention, economic development, public recreation, park development, and land-use. Seeing as gift cards are a county expenditure, we must consider whether they are authorized under the “fiscal affairs” power as “prescribed by law.” W. VA. CONST. art. IX, § 11.

To start, we can find no express or implied authorization for county commissions to expend funds on the MARL electric transmission line for energy purposes. The only mention of energy, electricity, or utilities connected to county commissions we can find deals with internal county energy savings contracts, W. VA. CODE § 7-1-300, and county-initiated infrastructure projects, *id.* § 7-20-11. Instead, the Legislature has largely assigned state utility regulation for electricity transmission and energy policy to the West Virginia Public Service Commission, the Office of Energy, and the West Virginia Public Energy Authority. *See, e.g., id.* §§ 24-2-1, 5B-2F-2, 5D-1-5. Siting decisions of the kind at issue here are specifically assigned to the Public Service Commission. *Id.* §§ 24-2-11, 24-2-11a. The county commission thus lacks the authority to address this issue for energy, electricity, or utility purposes.

That said, the PSC is “charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state’s economy[,] and the interests of the utilities subject to its jurisdiction and decisions.” W. VA. CODE § 24-1-1(b). PSC fulfills that mandate by “identify[ing], explor[ing], and consider[ing] the potential benefits or risks associated with emerging ... concepts,” and “hold[ing] hearings

regarding such concepts.” *Id.* § 24-1-1(c). That responsibility explains why public PSC hearings soliciting Hampshire County resident opinions on the MARL project are already slated, *Schedule of Hearings Set for June 2026*, W. VA. PUB. SERV. COMM’N, <https://tinyurl.com/yh3zux5u> (select “Monthly Calendars”; then choose “June” from the “Month” dropdown and click “Get Calendar”) (last accessed June 9, 2026), and the public has been actively engaged in public comments on the issue, *see Case No. 26-0075-E-CN Docket*, W. VA. PUB. SERV. COMM’N, <https://tinyurl.com/453kyhce> (last accessed June 9, 2026).

We are aware that county commissions have intervened in similar Public Service Commission proceedings in the past. *See, e.g.*, Commission Order, Suddenlink Commc’ns, Case No. 21-0515-CTV-SC-GI (W. Va. Pub. Serv. Comm’n July 30, 2021), <https://tinyurl.com/3h554b67>; Commission Order, Mountaineer Gas Co., Case No. 23-0280-G-42T (W. Va. Pub. Serv. Comm’n Mar. 31, 2023), <https://tinyurl.com/y3hxxzpr8>. In each case, the county commission participated to express the public interests of its residents. And here, the Hampshire County Commission intervened in the PSC MARL Project based on interests like “public health and safety,” “economic development, and the overall quality of life of its residents.” Petition to Intervene, NextEra Energy Transmission MidAtlantic, Inc., Case No. 26-00075-E-CN (W. Va. Pub. Serv. Comm’n Feb. 10, 2026), <https://tinyurl.com/3cwc8xa3>; Commission Order, NextEra Energy Transmission MidAtlantic, Inc., Case No. 26-00075-E-CN (W. Va. Pub. Serv. Comm’n Mar. 18, 2026), <https://tinyurl.com/392sp4tj> (accepting the petition to intervene).

We recognize that gift card incentives might increase the amount of information the county gleans on the issue, *see* Joshua Van Otterloo et al., *Gift Card Incentives and Non-Response Bias in a Survey of Vaccine Providers: The Role of Geographic and Demographic Factors*, 6 PLOS ONE 1 (2011), and that information may aid the PSC in fulfilling its statutory mandate—especially when a county commission is an intervening party with a right to “be heard on the argument of the case,” W. VA. CODE R. § 150-1-12.6.1. So, we find it may be reasonable and necessary for an intervening county commission to issue gift cards for public survey information related to a PSC proceeding when it concerns the county’s own legitimate public interests.

As to substance abuse treatment and prevention, West Virginia law recognizes the broad powers of county commissions to address local health needs. For instance, West Virginia Code § 16-2-14 empowers county commissions to “appropriate and spend money from the county or municipal general funds for public health purposes.” Likewise, Section 8-32-4 further declares that “the support of public or nonprofit health institutions dedicated to making available to the general public health and mental health services is for the general welfare of the public and is a public purpose for which funds of a municipality or county commission may be lawfully expended.” Substance abuse treatment and prevention fall firmly within the realm of public health, so the Commission has the express power to address that issue—and elicit information through gift cards in support of that power.

On to economic, public recreation, and park development. Each of these general interests fall under a county commission’s authority, though somewhat indirectly. County commissions oversee economic development through the County Development Authority. *See* W. VA. CODE §§ 7-12-1 to 7-12-16. The County Development Authority may “expend funds” for purposes like

“promot[ing], develop[ing,] and advanc[ing] the business prosperity and economic welfare of the ... county,” and the Legislature expressly sanctions these interests as legitimate public purposes. *See id.* §§ 7-12-2, 7-12-7(a)(12). The Legislature also authorizes county commissions to make “[c]ontributions ... from time to time” to the County Development Authority. *Id.* § 7-12-12. County commissions “may direct” how those funds are to be used, and should get an accounting of those expenditures quarterly. *Id.*

Similarly, county commissions oversee public recreation and park development through the County Parks and Recreation Commission. W. VA. CODE §§ 7-11-1 to 7-11-6. This commission has the power to “receive all income and other funds” from the county commission. *Id.* § 7-11-2. And it is authorized to “do any and all things which may be ... convenient to carry out and effectuate,” *id.*, the “establishing, improving, developing, administering, operating, and maintaining a county public parks and recreation system or public recreational facilities,” *id.* § 7-11-1.¹ Assuming the information gleaned from public surveys will advance the legitimate public purposes of the County Development Authority and County Parks and Recreation Commission, the Hampshire County Commission can earmark funds for gift cards that incentivize public survey participation generally.

Finally, we come to land use. The county commission regulates land use directly by adopting a comprehensive plan, W. VA. CODE § 8A-3-3(b), enacting subdivision and land development ordinances, *id.* § 8A-4-1(a)(1), and establishing zoning ordinances, *id.* § 8A-7-5(a), requiring plans and plats for land development, *id.* § 8A-1-1(b)(8)(B), issuing improvement location permits for construction, *id.* § 8A-1-1(b)(8)(C), and more. These powers affect the “public welfare,” promote orderly development of the community, growth that is economically sound, and supportive of community livability. *See generally id.* § 8A-1-1. And county commissions are “authorized to carry out the[se] objectives and overall purposes.” *Id.* § 8A-2-1.

County commissions also oversee a County Planning Commission which “serve[s] in an advisory capacity.” W. VA. CODE § 8A-2-1(c). The planning commission creates the comprehensive plan that the county commission may adopt. And the “major objective of the planning process is providing information to and coordination among divergent elements in the ... county” to ensure that “comprehensive plans and future development are compatible.” *Id.* § 8A-3-2(c). This includes studying factors like “population density, health, general welfare, historic sites, mobility transportation, food supply, education, water and sanitation requirements, public services, accessibility for the disabled and future potential for residential, commercial, industrial or public use.” *Id.* § 8A-3-2(b). The county commission must appropriate money to the planning commission to “defray the reasonable expenses” it incurs. *Id.* § 8A-2-10(a). To solicit appropriate information, we believe it is likely reasonable and necessary to marshal information from the general populace in the form of public surveys.

¹ Though this Article does not use the words, “public purpose,” those words do not hold talismanic effect. The action must serve a real and legitimate public interest. *See State ex rel. Appalachian Power Co. v. Gainer*, 149 W. Va. 740, 748-51, 755-56, 143 S.E.2d 351, 358-59, 362 (1965). We do not doubt that establishing, improving, developing, administering, operating, and maintaining county public parks and recreation systems and facilities is in the traditional public interest. Indeed, debt issued to these purposes are done “for a public purpose.” W. VA. CODE § 7-11-2.

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County commissions therefore may set aside funds for gift cards to incentivize public participation for information on county land-use planning.

Two notes. First, in distributing funds, please remember the proper fund distribution mechanisms we explained in our previous Opinion. Second, your letter does not detail the monetary value you plan for these gift cards, but you allude to their carrying low or modest values. No gift card “—even if authorized by statute and/or appropriation—should be of a value disproportionate to the value of the public benefit to be derived from the program of which the [gift card] is a part.” Op. Letter, 1967 WL 93385, at *5. Gift cards should thus carry a value that is proportional to the value of the information received.

In sum, the Hampshire County Commission may distribute funds to incentivize public participation in public surveys for information on the MARL project, county substance abuse treatment and prevention, land use, and economic, parks, and recreation development.

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 that extends to the left.

John B. McCuskey
West Virginia Attorney General

Matthew K. Niu
Caldwell Fellow