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Dear Prosecutor Snead:

You have asked for an Opinion of the Attorney General about whether the Webster County Economic Development Authority may, through its bylaws, restrict the number of members serving on its board and thereby limit the number of members the Webster County Commission may appoint. 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." When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence and discussions with the Attorney General's Office.

The Authority contends that its statutory "management and control" of the authority's business and affairs includes the power to fix the size of its own board by bylaw—here, at eleven members. By extension, the Authority could then decline to seat Commission appointees above that number. The Commission maintains that the appointment power belongs to it alone and cannot be limited by the Authority's bylaws.

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

> *May a county development authority, through its bylaws, restrict the number of members on its board and limit the county commission's power to appoint members—for example, by refusing to seat four of fifteen members the county commission has appointed because the authority's bylaws cap the board at eleven?*

We conclude that the Authority may not restrict the number of its own board seats. West Virginia Code § 7-12-3 lodges the appointment power in the county commission alone and fixes the permissible size of the board: "not fewer than seven nor more than 21" members. The choice of any number within that range is incident to appointment power, so it belongs to the county commission. The Authority's power to adopt bylaws reaches only bylaws "not inconsistent with laws," W. VA. CODE § 7-12-7(a)(1), and a bylaw that overrides the Commission's statutory appointment power is inconsistent with Section 7-12-3. So if the County Commission appoints fifteen members—a number within the statutory range—the Authority must seat all fifteen, and its eleven-member bylaw cap is void as applied to those appointments. If a smaller board is desired, the statute gives the Commission—not the Authority—the tools to shrink it.

DISCUSSION

I. Section 7-12-3 Vests the Appointment Power—Including the Choice of Board Size Within the Statutory Range—in the County Commission.

County development authorities exist at the county commission's option. West Virginia Code § 7-12-1 authorizes the county commission of every county to "create and establish" a development authority; once created, the authority "constitute[s] a public corporation." W. VA. CODE §§ 7-12-1, 7-12-6. Section 7-12-3 then prescribes the Authority's governance: "The management and control of a county authority, its property, operations, business, and affairs shall be lodged in a board of not fewer than seven nor more than 21 persons who shall be appointed by the county commission and be known as members of the authority." W. VA. CODE § 7-12-3.

The section then repeats the point twice more: "The county commission shall appoint one member to represent the county commission on the board," and "[m]embers of the board shall be appointed by the county commission." *Id*. The commission also fills vacancies—"a successor shall be appointed by the county commission to fill out the remainder of [the departing member's] term"—and holds an unqualified removal power: "The county commission may at any time remove any member of the board by an order duly entered of record and may appoint a successor member for any member so removed." *Id*.; *see also* W. VA. CODE § 7-12-11 ("The … county commission [is] hereby authorized and empowered to appoint members of the said authority.").

That text is clear, so we apply it as written. "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968). Every membership function that Section 7-12-3 addresses—initial appointment, vacancies, and removal—belongs to the county commission. The statute assigns the Authority no role in selecting its own members.

The statute speaks to board size the same way. It sets the size as a range—"not fewer than seven nor more than 21"—and defines the board as consisting of the "persons who shall be appointed by the county commission." W. VA. CODE § 7-12-3. The number of members at any given time is thus a function of how many persons the commission has appointed and not removed. Someone must decide how many of the permissible seats to fill, and the statute answers that question by assigning the filling of seats to the commission. Put another way, aside from the statutory range, the size of the board is a product of the appointment power rather than a precondition to that power's exercise. Deciding how many members to appoint within the statutory band is thus an ordinary incident of the appointment power. Were it otherwise, an authority could otherwise impede the commission's authority by capping the number of seats and effectively vetoing appointments. But that would defeat the "wide discretion" the county commission holds in the power's execution. Syl. pt. 1, *Cnty. Comm'n of Greenbrier Cnty. v. Cummings*, 228 W. Va. 464, 720 S.E.2d 587 (2011).

The structural relationship between the two bodies confirms this reading. The Commission creates the Authority, appoints its entire board, and may remove any member at any time. W. VA. CODE §§ 7-12-1, 7-12-3. And what the Commission creates, it may generally unmake: "Any body or tribunal having power to create a public office has implied power to abolish it, in the absence of a limitation imposed by the authority conferring the power." Syl., *Hatfield v. Cnty. Ct. of Mingo Cnty.*, 92 S.E. 245 (W. Va. 1917). Authority under Article 12 runs from the Commission to the Authority—not the other way around. Reading Section 7-12-3 to let the created board veto the creating commission's appointments would invert that hierarchy and defeat the presumption of propriety that attaches to commission appointments. *See McClure v. McClure*, 184 W. Va. 649, 651, 403 S.E.2d 197, 199 (1991).

Our Office's prior opinions further support this reading. In 2015, we considered whether a county commission could remove members of a county emergency ambulance authority under Article 15 of Chapter 7. We said no, because that article conferred no removal power. But we contrasted the development authority statute at issue here, which expressly provides that the county commission "may at any time remove any member of the [development authority] board by an order duly entered of record." W. Va. Att'y Gen., Opinion Letter Regarding a County Commission's Power Over an Ambulance Authority, at 3 (Nov. 12, 2015). The lesson of that opinion is that control over the membership of a county-created authority is a matter of express statutory allocation. Under Section 7-12-3, every express allocation runs to the county commission. *See also* W. Va. Att'y Gen., Opinion Letter Regarding Planning Commission, at 3 (Apr. 25, 1964) (noting that a county court—the predecessor to county commissions—"determines the number of members that shall constitute [a planning] commission").

II. The Authority's Bylaw Power Does Not Include the Power to Cap the Board or Refuse the Commission's Appointees.

The Authority points to its bylaw power in Section 7-12-7(a)(1) and the "management and control" clause of Section 7-12-3. Neither bears weight.at

Begin with the bylaw power. Section 7-12-7(a)(1) empowers a development authority "[t]o make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with laws." W. VA. CODE § 7-12-7(a)(1). So a limitation is built into this grant: the Authority's bylaws must yield to "laws," and Section 7-12-3 is one of those laws. A bylaw fixing the board at eleven members operates, in practice, as a rule that the county commission may appoint no more than eleven persons—something Section 7-12-3 nowhere says and its text, which permits up to twenty-one commission appointees, contradicts. W. Va. Att'y Gen., Opinion Letter Regarding a County Commission's Power Over an Ambulance Authority, at 3 (May 8, 2014) (applying analogous provisions of the Emergency Ambulance Service Act: "[T]he bylaws are inconsistent with the Act, insofar as they purport to alter or limit the County Commission's exclusive discretion to appoint members of the Board. In that circumstance, the Act must govern because an authority's bylaws are required to be consistent with and further the provisions of the Act.").

Indeed, by narrowing the range of permissible board sizes, the bylaws would appear to conflict directly with the Legislature's instructions that any board size of "not fewer than seven nor more than 21 persons" is permissible. W. VA. CODE § 7-12-3. A bylaw inconsistent with the statute is beyond the Authority's power to adopt and is void to the extent of the inconsistency. *Cf.* Syl. pt. 3, *Rowe v. W. Va. Dep't of Corr.*, 170 W. Va. 230, 292 S.E.2d 650 (1982) ("[A]n administrative agency may not issue a regulation which is inconsistent with, or which alters or limits its statutory authority.").

First principles point the same way. A development authority is a public corporation created by statute. W. VA. CODE § 7-12-6. Statutory bodies "must find within the statute warrant for the exercise of any authority which they claim," for "[t]hey have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication." Syl. pt. 3, *Mountaineer Disposal Serv., Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973). That principle governs even the county commissions themselves, which are "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, 418 S.E.2d 585 (1992). It applies at least as forcefully to the public corporations that county commissions create. And nothing in Article 12 confers on a development authority the power to determine the size of its own board or to pass on the number of the commission's appointees.

The Legislature's silence is especially meaningful because the Legislature addressed bylaws elsewhere in the very section at issue. Section 7-12-3's final sentence gives the authority a bylaw role touching membership—but a narrow one: "persons, firms, unincorporated associations, and corporations, who reside, maintain offices, or have economic interests in the county, are eligible to participate in and request the county commission to appoint members to the development authority as the said authority shall by its bylaws provide." W. VA. CODE § 7-12-3. The Authority may thus use its bylaws to structure who may *ask* the Commission to make appointments. The appointment decision itself stays with the Commission. "In the interpretation of statutory provisions the familiar maxim *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, applies." Syl. pt. 3, *Manchin v. Dunfee*, 174 W. Va. 532, 327 S.E.2d 710 (1984). Having granted the Authority one carefully bounded bylaw role in the appointment process, the Legislature's decision not to grant a second—a power to cap the number of appointees—implies that no such power exists. After all, "we are obliged not to add to statutes something the Legislature purposely omitted." *Perito v. Cnty. of Brooke*, 215 W. Va. 178, 184, 597 S.E.2d 311, 317 (2004) (cleaned up).

Nor does "management and control" fill the gap. The Authority reads Section 7-12-3's opening clause—lodging "[t]he management and control of a county authority, its property, operations, business, and affairs" in the board—to make board size a matter of internal management, as it might be for a private business corporation. But the clause cannot be read in isolation from the sentence that contains it. The same sentence that lodges management and control "in a board" defines that board as one "of not fewer than seven nor more than 21 persons who shall be appointed by the county commission." W. VA. CODE § 7-12-3. The management-and-control clause describes what the board governs: the Authority's property, operations, business, and affairs—the subjects elaborated in Section 7-12-7, such as contracting, acquiring and disposing of property, borrowing, issuing revenue bonds, and employing personnel. It does not describe who sits on the board or how many; the appointment clause does that, and it points to the Commission. *Accord* 2005 N.D. Op. Att'y Gen. No. L-08 (2005) (explaining that the county and city commissions that established a board of health and appointed its members had the power to shrink the size of the board, even though the board itself wished to increase its size).

Even if the two clauses were thought to overlap, the specific would control the general. "The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled." Syl. pt. 10, *Barber v. Camden Clark Mem'l Hosp. Corp.*, 240 W. Va. 663, 815 S.E.2d 474 (2018). Section 7-12-3's specific directives about appointment would prevail over any general implication drawn from "management and control." But no conflict need be found at all, because the provisions are easily harmonized: Section 7-12-3 governs who serves and in what numbers; Sections 7-12-3 and 7-12-7 together give the board full control over what the Authority does. Read that way, every provision retains its full field of operation, consistent with the courts' practice of harmonizing statutes where reasonably possible. *State v. Schober*, 251 W. Va. 34, 41 n.21, 909 S.E.2d 69, 76 n.21 (2024). Only the Authority's reading creates a conflict—and when a bylaw conflicts with the Code, the bylaw loses by the express terms of Section 7-12-7(a)(1).

III. The Authority Must Seat All Fifteen Appointees; the Commission Holds the Lawful Means to a Smaller Board.

Your letter offers the following example: the Commission appoints fifteen members, but the Authority's bylaws cap the board at eleven. May the Authority refuse to accept four of the appointees? No. Fifteen falls within Section 7-12-3's range of seven to twenty-one, so the appointments are a lawful exercise of the Commission's power. The bylaw cap is inconsistent with that lawful exercise and void as applied, and the Authority must seat all fifteen members.

If the Authority nonetheless refused, the excluded appointees—or the Commission—would hold a clear legal right to the seats, enforceable by writ of mandamus. A writ of mandamus issues when three elements coexist: "(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." Syl. pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969). Here, the Authority would have a clear legal duty to perform the ministerial task of seating the Commission's valid appointments. And no other remedy aside from mandamus would rectify a refusal to do so.

None of this leaves a county saddled with a larger board than it wants. The remedy for an oversized board simply belongs to the Commission rather than the Authority.

* * *

A county commission's power to appoint the members of a county development authority—including the choice of how many members to appoint within Section 7-12-3's range of seven to twenty-one—cannot be limited by the development authority through its bylaws. If the County Commission appoints fifteen members, the Authority must seat all fifteen; a bylaw capping the board at eleven is void to the extent it conflicts with those appointments.

Sincerely,

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