



State of West Virginia
Office of the Attorney General

Patrick Morrisey
Attorney General

(304) 558-2021
Fax (304) 558-0140

September 6, 2024

The Honorable John G. Ours
Grant County Prosecuting Attorney
5 Highland Avenue
Petersburg, WV 26847

Dear Prosecutor Ours:

You have asked for an Opinion of the Attorney General about a county commission's power to own and lease property. 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 and discussions with the Office of the Attorney General.

You explain that the Grant County Commission currently operates a 911 center in a building it leases from the Grant County Development Authority. Your letter asks whether the Grant County Commission could purchase the building and later lease part of it to a for-profit entity.¹

Thus, you raise the following legal questions:

- (1) *May the Grant County Commission purchase the building from the Grant County Development Authority to operate a 911 center?*
- (2) *If the Grant County Commission can purchase the building, may the Commission lease a portion of it to a for-profit entity?*

¹ Your letter refers to the "911 center" as the entity looking to purchase and subsequently lease property. You have clarified that the "911 center" is an extension of the Grant County Commission. Thus, for the purpose of this letter, we focus on the Grant County Commission's powers.

We conclude that the Grant County Commission may purchase the building to operate a 911 center. County commissions have broad express powers to purchase property for purposes like this one. County commissions can also operate emergency telephone systems, and the power to buy a building in which to operate it would be an implied extension of that power, too.

But we conclude that Grant County Commission could not later lease part of the building to a for-profit entity. County commissions may lease property only in certain specific circumstances. A lease to a for-profit entity is not one of those circumstances.

DISCUSSION

I. **The Grant County Commission May Purchase The Data Center Building To Operate A 911 Center.**

As with all county commissions, the Grant County Commission 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, 418 S.E.2d 585 (1992); *see generally* W. VA. CONST. art. IX, § 11 (“Powers of county commissions”). But though county commissions have limited powers, when they do have a power, the commissions are “vested with a wide discretion” in its execution. *Cnty. Comm’n of Greenbrier Cnty. v. Cummings*, 228 W. Va. 464, 469, 720 S.E.2d 587, 592 (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).

The building purchase you describe would fall within the county commission’s express powers. West Virginia Code § 7-3-2 says that the “county commission ... may, by purchase or otherwise, acquire as much land as may be requisite or desirable for county purposes, and may suitably enclose, improve, and embellish the lands so acquired.” Likewise, West Virginia Code § 7-3-5 provides that the county commission may “make or enter into a contract, ... for the erection, construction, equipment, leasing, and renting of a courthouse, hospital, *other public buildings.*” (emphasis added). And West Virginia Code § 7-3-7 explains that “[a]ny county commission is likewise authorized and empowered to acquire real estate for, construct, equip, furnish and maintain a courthouse, hospital or *other public buildings* or jail.” (emphasis added). These provisions are to be “liberally construed.” W. VA. CODE § 7-3-12. Altogether, they reflect what the Supreme Court of Appeals said more than a century ago: county commissions enjoy “discretion ... without limitation” when it comes to purchasing real estate. *Keatley v. Summers Cnty. Ct.*, 70 W. Va. 267, 270, 73 S.E. 706, 708 (1911). And these powers are more than broad enough to cover the purchase of a building like yours.

Even if we were to put these broad express powers aside, we would conclude that the Legislature has impliedly empowered the county commission to buy the building to house the 911 center. Among their powers, county commissions are responsible for providing local emergency services, such as law enforcement, fire protection, and ambulances. For instance, county commissions are tasked with “the superintendence and administration of the internal police and

fiscal affairs of their counties.” W. VA. CONST. art IX, § 11. The Legislature also requires county commissions to provide emergency ambulance services “where such service is not otherwise available.” W. VA. CODE § 7-15-4. And as part of their emergency service duties, county commissions may establish and operate a 911 center. *See id.* § 24-6-4 (empowering county commissions with the power to “establish ... an emergency telephone system within [their] jurisdiction”); *see also id.* § 7-1-3cc (providing a second option for 911 services whereby a county commission may “instead[] establish an enhanced emergency telephone system”).

Here, the power to establish and operate a 911 center necessarily implies the power to do such things as are “reasonably necessary to perform that function.” *State ex rel Cnty. Court v. Arthur*, 150 W. Va. 293, 297, 145 S.E.2d 34, 37 (1965). And establishing and operating a 911 center would be impossible if there was no building in which the center could operate. Indeed, the law envisions a county’s “answering point” for 911 calls to be “a facility.” W. VA. CODE § 24-6-2. And that facility should be “operated constantly.” *Id.* § 24-6-5(3). Thus, “[w]hile no statute expressly authorizes” the Grant County Commission “to purchase” the building in this case, “such authority is implied as necessary and reasonable incident to” creating an emergency telephone system. *Arthur*, 150 W. Va. at 297, 145 S.E.2d at 37.

It does not matter that the 911 center is currently operated under a lease, either. Like their broad power to purchase property generally, county commissions have the express power to operate emergency telephone systems. This broad delegation gives the Grant County Commission “wide discretion” in how to execute this power. Syl. pt. 1, *Meador v. Cnty. Court*, 141 W. Va. 96, 87 S.E.2d 725 (1955). Deciding whether to buy property that’s presently leased is within that discretion. *See State ex rel. Lambert v. Cortellessi*, 182 W. Va. 142, 149, 386 S.E.2d 640, 647 (1989) (holding that where a county commission has express power, it is inappropriate “[t]o substitute the judgment of the circuit court for that of the” commission).

Thus, we conclude that the Grant County Commission may purchase the building in question to operate a 911 center.

II. The Grant County Commission May Not Lease Part Of The Data Center To A For-Profit Entity.

County commissions have far more circumscribed authority to lease to others. In fact, a county commission may only lease under certain situations described in two statutory provisions. First, they may lease “county-owned buildings, lands, and other properties” to “*nonprofit organizations*” for certain enumerated purpose. W. VA. CODE § 7-1-3k (emphasis added). And second, they may lease “any of [their] real or personal property” to the federal government or “to the state or any agency or instrumentality thereof,” provided the lease is “for a public purpose.” *Id.* § 7-1-3hh.

A county commission’s implied authority to lease property is also limited. Specifically, a commission’s implied power to lease its property cannot exceed its express authority. *See* syl. pt. 4, *State ex rel. W. Va. Parkways Auth. v. Barr*, 228 W. Va. 27, 716 S.E.2d 689 (2011) (holding that where a power is “expressly conferred,” a county commission can only act “in the mode prescribed”). So county commission leasing power is constrained because the Legislature

specifically listed permissible leases. See syl. pt. 3, *Manchin v. Dunfee*, 174 W. Va. 532, 327 S.E.2d 710 (1984) (noting that “the express mention of one thing implies the exclusion of another”). And “[i]f any reasonable doubt exists as to whether” a county commission “has a power, the power must be denied.” Syl. pt. 1, *McAllister v. Nelson*, 186 W. Va. 131, 411 S.E.2d 456 (1991).

The leasing arrangement described in your letter does not fit into any of the expressly listed leasing powers of commission. And the power to lease property to a for-profit entity—seemingly for economic gain—is neither “reasonably” nor “necessarily” implied in the exercise of the Grant County Commission’s express powers. Putting all this together, we conclude that the Grant County Commission cannot lease the data center building—if it chooses to purchase it—to a for-profit entity. Cf. *Keatley*, 70 W. Va. at 270, 73 S.E. at 708 (explaining that predecessors to county commissions could not “buy more land ... simply with a view of making a profit by resale of a portion thereof”).

In prior opinions, we said much the same. In a 2018 Opinion Letter, we explained that “any lease” by a county commission to a “private, for-profit business” would “exceed [the statutory] limits,” even where a permissible public lessee was a co-lessee. Off. of the W. Va. Att’y Gen., Opinion Letter on the Authority of a County Commission to Lease Real Property (June 6, 2018), 2018 WL 3390019, at *2. Similarly, in a 2014 Opinion Letter, we wrote that a county commission had neither the express nor implied power to “lease property to a private individual for private residential purposes.” Off. of the W. Va. Att’y Gen., Opinion Letter on the Authority of County Commissions to Lease Real Property to Private Individuals (May 6, 2014), 2014 WL 1875639, at *1-2. Although we also recently wrote that a county *building* commission could be permitted to lease a building despite the involvement of a for-profit entity, we stressed that building commissions wield broader leasing powers because of differences in the statutory language establishing them. See *generally* Off. of the W. Va. Att’y Gen., Opinion Letter on The Sale of Sundale Nursing Home (June 18, 2024), 2024 WL 3380828.

Thus, the county commission cannot enter the lease arrangement with a for-profit entity, as described in your letter. That said, because the Commission’s powers derive from statutes, the Legislature would always be free to amend the law and permit commissions to lease property under the circumstances your letter describes.

Sincerely,



Patrick Morrissey
West Virginia Attorney General

Michael R. Williams
Solicitor General

Caleb A. Seckman
Assistant Solicitor General