



State of West Virginia
Office of the Attorney General

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June 15, 2017

The Honorable Jeffrey L. Freeman
Prosecuting Attorney
Office of the Marion County Prosecuting Attorney
213 Jackson Street
Fairmont, WV 26554

Dear Prosecutor Freeman:

You have asked for an Opinion of the Attorney General regarding the authority of the Marion County Commission to set the hours and days of operation for certain offices in the Marion County Courthouse. This Opinion is being issued pursuant to 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 is based solely upon the factual assertions set forth in your correspondence with the Office of the Attorney General.

Your correspondence raises the following legal question, which is addressed below:

Whether the Marion County Commission has the authority to set the hours and days of operation for offices of other elected officials in the Marion County Courthouse, and by what mechanism it may enforce any such authority?

Your correspondence concerns the authority of the Marion County Commission to set office hours for the offices in the Marion County Courthouse, specifically the offices of other independently elected officials. According to your letter, on at least two occasions, some elected officials have chosen to close their offices, or to provide limited hours of operation, or to allow employees paid time off by running the offices with only a skeleton crew, when there has been no official State or nationwide pronouncement of a holiday. The Marion County Commission seeks the Opinion of the Attorney General regarding whether these elected officials have independent authority to set their own office hours, or if the Commission may set office hours governing the offices of these independently elected officials in the Marion County Courthouse.

We believe that the Marion County Commission does not have the authority to set the hours and days of operation for offices of elected officials within the Marion County Courthouse. As we explain below, county commissions have wide discretion over the fiscal affairs of their counties. At the same time, independently elected officials have discretion over how to conduct business in their respective offices, with which the Marion County Commission does not have authority to interfere.

County commissions are created by the West Virginia Constitution, *see* W. Va. Const. art. IX, §§ 9, 11, and act as “the central governing body of [each] county,” *State ex rel. Dingess v. Scaggs*, 156 W. Va. 588, 590, 195 S.E.2d 724, 725 (1973). Though generally “vested with a wide discretion,” *Cnty. Comm’n of Greenbrier Cnty. v. Cummings*, 228 W. Va. 464, 469, 720 S.E.2d 587, 592 (2011) (quoting Syl. Pt. 1, in part, *Meador v. Cnty. Court*, 141 W. Va. 96, 87 S.E.2d 725 (1955)), the powers of county commissions are limited to those “expressly conferred by the West Virginia Constitution and our State Legislature, or powers reasonably and necessarily implied for exercise of those expressed powers,” *Berkeley Cnty. Comm’n v. Shiley*, 170 W. Va. 684, 685, 295 S.E. 2d 924, 926 (1982). “The constitution and laws of this State have committed to county [commissions] certain legislative, executive and judicial powers directly connected with the local affairs of the county.” *Scaggs*, 156 W. Va. at 590, 195 S.E.2d at 725; *see, e.g.,* W. Va. Code § 7–1–3 (general powers and duties of county commissions).

Relevant here, the West Virginia Constitution charges county commissions with “the superintendence and administration of the internal police and fiscal affairs of their counties,” subject to “such regulations as may be prescribed by law.” W. Va. Const. art. IX, § 11. But while the West Virginia Supreme Court of Appeals has recognized that “[t]he word ‘superintendence’ in the section implies the right of oversight,” it “does not carry the thought of absolute control over . . . the fiscal affairs of the county.” *State Rd. Comm’n v. Kanawha Cnty. Court*, 112 W. Va. 98, 163 S.E. 815, 818 (1932). Thus, it is well-established that the individually elected officers under the county commission’s oversight have independent authority over how to conduct the fiscal affairs of their respective offices. This means that while the county commission must “determine the aggregate sum to be expended on staff compensation in each of the named county offices,” *State ex rel. Lambert v. Cortellessi*, 182 W. Va. 142, 146-47, 386 S.E.2d 640, 644-45 (1989), once the “aggregate sum” for a county official’s staff compensation is appropriated by the county commission, the distribution and division of that sum is generally within the discretion of the county official, *see, e.g., id.* (county officials have complete discretion over how funds—the total amount of which is appropriated from the county commission—are distributed or allocated among their staff); *Cummings*, 228 W. Va. at 470, 720 S.E.2d at 593 (“Subject only to the requirement that they not exceed the aggregate amount of their respective budget, county officials are given the responsibility of ‘fixing the individual compensation of their assistants, deputies and employees.’”); W. Va. Op. Att’y Gen. 2015 WL 5210280, at *3 (Sept. 1, 2015) (a sheriff has discretion over how to spend his budget once it has been appropriated by a county commission).

While the Court has never to our knowledge addressed the precise question at issue here, we believe the general principles outlined above support the conclusion that the County Commission lacks authority to dictate to each independently elected official within the county

Hon. Jeffrey L. Freeman

June 15, 2017

Page 3

how to manage the day-to-day affairs of his or her office, including setting the hours and days of operation for employees. The Supreme Court of Appeals has long made clear that county officials have broad discretion over their budgets once an aggregate sum has been approved by the county commission; this principle would seem naturally to provide county officials with discretion over managing the day-to-day functions of their offices. The “oversight” authority of the Marion County Commission does not give it the “absolute authority” to interfere with a county official’s day-to-day operation of his or her office. As such, the Commission appears to be precluded from mandating particular office hours for the offices of county officials.¹

This conclusion does not mean that there are no limits to what an elected official may do with respect to setting the hours and compensation for staff within their respective office. We note, for example, that only the Legislature has the power to authorize by general legislation the observance of legal holidays. *State ex rel. Morgan v. Miller*, 177 W. Va. 97, 104, 350 S.E.2d 724, 731-32 (1986) (citing W. Va. Code § 2-2-1 and Syl. Pt. 1, *Pullano v. City of Bluefield*, 176 W. Va. 198, 342 S.E.2d 164 (1986)). Both federal and state law may provide other limitations. The precise limits of local elected officials’ discretion, the mechanisms by which such limits may be enforced, and whether those limits were exceeded in the instances outlined in your letter, are beyond the scope of this opinion.

Sincerely,



Patrick Morrissey
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Thomas M. Johnson, Jr.
Deputy Solicitor General

Katlyn Miller
Assistant Attorney General

¹ While certain contours of the relationship between county commissions and the various independently elected county officials are explicitly outlined, *see* W. Va. Code §7-7-7, we are unaware of any constitutional provision, statute, or regulation that would provide the County Commission with authority to set the hours and days of operation for the offices of independently elected officials. *Cf* Syl. Pt. 4, *Webster Cnty. Comm’n v. Clayton*, 206 W. Va. 107, 522 S.E.2d 201 (1999) (“The plain language of W. Va. Code § 7-7-7 (1982) (Repl. Vol. 1993) permits a sheriff [an independently elected county official] to appoint or employ individuals to assist him/her in the performance of his/her official duties only after he/she has obtained the advice and consent of the county commission to such appointment or employment.”); Syl. Pt. 1, *Rutledge v. Workman*, 175 W. Va. 375, 332 S.E.2d 831 (1985) (“It was the intention of the framers of the judicial article (Article VIII) of the *W. Va. Const.* that the clerk of a circuit court, although an independently elected, public official, be subject to the direction and control of the circuit court of the county in which she serves or of the chief judge of that county’s circuit court with regard to her court-related duties.”)