



State of West Virginia  
Office of the Attorney General

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September 4, 2025

The Honorable Charlie B. Johnson III  
Mineral County Prosecuting Attorney  
150 Armstrong Street  
Keyser, W. Va. 26726

Dear Prosecutor Johnson:

You have asked for an Opinion of the Attorney General about the Mineral County Commission's authority to require volunteer fire departments to submit to financial review as a condition of receiving levy funds. 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 Mineral County Commission requires local volunteer fire departments to sign a Memorandum of Understanding as a condition to receive levy funds. That MOU says the VFDs must allow an independent accountant to conduct annual financial reviews following agreed-upon procedures. Under these procedures, the VFD must deposit levy funds into a designated account. The MOU does not say where VFDs must deposit other funds disbursed by the County Commission—such as State Fire Protection Funds. Each VFD signed this MOU, and your letter suggests that the County Commission has withheld levy funds when a VFD has failed to comply with the MOU.

You further explain that the County Commission recently informed the VFDs that *all* fire-related accounts, not just levy accounts, must be included in the financial review. One VFD has objected to this requirement. That VFD will allow the County Commission to review only its levy account, which is also the account into which it deposited the State Fire Protection Funds. In response, the County Commission requested this opinion.

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

- (1) *Does the County Commission have legal authority to require a financial review of volunteer fire departments' levy accounts and other accounts receiving public funds?*
- (2) *May the County Commission lawfully withhold levy disbursements from departments that refuse to comply with the financial review requirement?*
- (3) *If such requirements are not legally permissible, what would be a recommended, legally acceptable method to ensure proper accountability of levy funds disbursed to independent volunteer fire departments?*

We conclude first that the County Commission may not require a financial review of either levy accounts or other financial accounts. We also conclude that the County Commission may not lawfully withhold levy disbursements. Finally, the County Commission may request that the Legislative Auditor perform an audit of any VFD about which the County Commission has concerns.

## DISCUSSION

### **I. The County Commission Does Not Have Legal Authority To Require Financial Review Of Any VFD Accounts or Withhold Disbursements.**

To determine whether the County Commission has the power to audit VFDs' accounts, we start with the basic principle that county commissions are "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 ... 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). So to require the financial reviews here, the County Commission must have either the express or necessarily implied power to do so.

County commissions do not possess an express audit power over VFDs. Your letter does not identify any statute "clearly and unmistakably" providing that authority "with directness and clarity," and we also have not located any. Express, *Black's Law Dictionary* (12th ed. 2024).

We conclude the County Commission has no implied power to conduct such audits, either. For implied audit authority to exist, such power must be "reasonably and necessarily implied in the full and proper exercise of" a county commission's express power. Syl pt. 4, *State ex rel. W. Va. Parkways Auth. v. Barr*, 228 W. Va. 27, 716 S.E.2d 689 (2011). Several statutes guide our analysis.

Start with West Virginia Code Section 7-1-3d(a)(1), which provides that county commissions may "[l]evy for and erect, maintain, and operate fire stations." The statute allows 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.” *Id.* § 7-1-3d(b). Thus, county commissions are authorized to levy for and provide funding to fire departments, including VFDs.

Nothing about this language implies that the County Commission holds the power to condition those funds on an audit. That silence is meaningful. *See State ex rel. Matthews v. Anderson*, 127 W. Va. 147, 31 S.E.2d 779, 781 (1944) (finding that county court did not have claimed authority over ballots where relevant statutes were “silent” as to the claimed authority). And “[w]here 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). Even if some ambiguity could be found, that ambiguity must be resolved *against* the County Commission. Syl. pt. 1, *McCallister v. Nelson*, 186 W. Va. 131, 411 S.E.2d 456 (1991) (“If any reasonable doubt exists as to whether” a county commission “has a power, the power must be denied.”). Indeed, for reasons like this, we determined in a prior opinion that “Code 7-1-3d ... authorizes financial aid to be rendered by a county court to any public fire protection facility within the county (including [VFDs])” but has “no provision made for the audit of such funds.” W. Va. Op. Att’y Gen., Opinion Letter to the Honorable Russell C. Dunbar (April 3, 1968), 1968 WL 94102, at \*3.

Next, West Virginia Code Section 8-15-7a specifically reserves (as of July 2025) “the authority and the duty to make a regular review of the finances of each [VFD]” to the West Virginia Legislative Auditor. The Legislative Auditor completes VFD audits “at least once every five years.” *Id.* The statute permits more frequent audits as well if the Legislative Auditor has cause to believe they are necessary. *Id.* The audits would cover accounts with levy funds, too, as the statute calls for review of “all income of the [VFD], regardless of the source of funds.” *Id.*

The “[e]xplicit direction for” the Legislative Auditor to have this power, and the “absence” of such direction for county commissions “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). After all, “it is generally presumed that the Legislature acts intentionally and purposely in the disparate inclusion or exclusion” of language in related statutes. *Christopher J. v. Ames*, 241 W. Va. 822, 831, 828 S.E.2d 884, 893 (2019) (cleaned up). This distinction is especially significant given that the Legislature chose to empower county commissions with audit power elsewhere, further reinforcing the significance of the omission here. *See, e.g.*, W. VA. CODE § 3-1-44 (providing that election expenses “are to be audited by the county commission”).

Finally, the Legislature speaks explicitly when it wants relevant entities to detail and report fire-related expenses. For example, county commissions may contribute to the “county fire board.” W. VA. CODE § 7-17-17. The fire board must then deposit those funds “in such bank or banks as the county fire board may direct” and “withdraw[] therefrom in such manner as the county fire board may direct.” *Id.* In that case, the county fire board “shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the county commission and municipalities containing an itemized statement of its receipts and disbursements during the preceding quarter.” *Id.* County fire boards also must report on their finances annually. *Id.* No similar statutory requirements apply to VFDs. Again, we must “assume the omission was intentional.” *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 128, 464 S.E.2d 763, 770 (1995).

Further, the County Commission cannot use the MOU to create a power that doesn't exist. Remember county commissions "are limited in their authority." *Barr*, 228 W. Va. at 32, 716 S.E.2d at 694. And unlike the county fire board, county commissions lack general contracting authority or the specific authority to contract for services "in connection with obtaining funds." W. VA. CODE § 7-17-14. Indeed, the Legislature frequently specifies what kinds of contracts county commissions may enter. *See, e.g.*, W. VA. CODE §§ 7-1-3a (power to contract for construction of streets and sewers), 7-1-3cc (power to contract with telephone companies), and 7-1-3gg (power to enter agreements to lease equipment and materials). A contract for VFD audits isn't one. And because the power to contract is expressly granted on some subjects, county commissions can only exercise that power "in the mode prescribed." Syl. pt. 1, *State ex rel. County Court v. Arthur*, 150 W. Va. 293, 145 S.E.2d 34 (1965).

Put simply, it is improper to "arbitrarily ... read into [statutes] that which [they] do[] not say." *Banker v. Banker*, 196 W. Va. 535, 546-47, 474 S.E.2d 465, 476-77 (1996). And no statutory or constitutional provision—expressly or otherwise—gives the County Commission the power to require VFDs to submit to a financial review as a term of levy disbursement. So they cannot.

It follows, then, that the County Commission also cannot withhold levy disbursements for VFDs who do not comply with that improper condition.

## **II. The County Commission Can Take Steps Going Forward To Ensure Accountability.**

Lastly, you have asked how the County Commission might—short of an audit—ensure that VFDs are spending their funds appropriately.

The statute again provides the answer: if the County Commission suspects a VFD of impropriety, the County Commission could contact the Legislative Auditor. *See* W. VA. CODE § 8-15-7a. While these audits occur no less than once every five years, the Legislative Auditor needs only "cause to believe that loss, mismanagement, misuse, or waste" is occurring to initiate an audit. *Id.* Though you do not suggest that any specific VFD is guilty of such abuses, this statutorily prescribed audit process is the most direct route to accountability.

You may also seek assistance from the State Auditor's Office. The Legislature empowered that office to "[m]ak[e] annual or special financial and compliance examinations or audits of local government offices." W. VA. CODE § 6-9-11(a)(1). Local government offices include "any other authority, board, commission, district, office, public authority, public corporation or other instrumentality of a county ... or municipality." *Id.* § 6-9-11(a). Because the volunteer fire department is always subject to the "governing body" of a municipality, *id.* § 8-1-2(b)(1), § 8-1-4, it would appear to constitute a "local government office" subject to the State Auditor's broader powers.

We focus on these two legal avenues to ensure accountability, but the County Commission might also find other ways to bring to light financial malfeasance, including public calls for financial disclosure.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. McCuskey". The signature is fluid and cursive, with a long horizontal stroke at the end.

John B. McCuskey  
West Virginia Attorney General

Holly J. Wilson  
Principal Deputy Solicitor General

Caleb A. Seckman  
Assistant Solicitor General