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July 31, 2018

The Honorable Catie Wilkes Delligatti  
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Dear Prosecutor Delligatti:

You have asked for an Opinion of the Attorney General concerning the ability of the Berkeley County Development Authority ("BCDA") to make matching contributions to educational institutions and to provide funding for various recreational activities within Berkeley County. This Opinion is issued pursuant to W. Va. 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 on the factual assertions in your correspondence with the Office of the Attorney General.

In your letter and discussions with our Office, you explain that several businesses have asked if the BCDA will provide matching funds to facilitate various educational and recreational programs within Berkeley County. The BCDA is interested in granting some of these requests by providing matching-funds grants to "educational institutions, non-profit organizations" or "governmental entities or subdivisions which further economic development and vitality in Berkeley County." You further note that, with respect to the education-related funding, "generally, the BCDA intends to utilize the grant program to support business-related coursework and certifications" at local educational institutions, such as Blue Ridge Community and Technical College ("BRCTC") in Martinsburg.

Your letter raises the following legal question:

*Does West Virginia Code Section 7-12-1 et seq. permit a county development authority to issue matching funds to a private educational institution or other private or governmental entity for the purpose of fostering economic development?*

We conclude that there is no legal barrier to the BCDA issuing matching funds to an educational institution or other entity to support educational or recreational activities, as long as the programs are connected to advancing business and economic interests within Berkeley County.

### *Discussion*

Under West Virginia law, municipalities and counties are empowered to create development authorities. W. Va. Code § 7-12-1. The overall goal of a development authority—including the BCDA—is to “promote, develop and advance the business prosperity and economic welfare” of the county. W. Va. Code § 7-12-2.

The authorizing statute includes several specific descriptions of development authorities’ purposes, including to “stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the [county’s] economic stability,” “provide maximum opportunities for employment,” “improve the standard of living of the citizens of the county,” act with other organizations “in the promotion and advancement of . . . recreational developments,” and “furnish money . . . and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity” in the county. W. Va. Code § 7-12-2. Development authorities also have statutory power to “enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations,” consistent with its purposes, W. Va. Code § 7-12-7(a)(3), and to expend “funds in the execution of the powers and authority herein given,” W. Va. Code § 7-12-7(12).

In addition to these specific powers, development authorities also have statutory authorization “generally to do *any and all things necessary or convenient*” toward the end of “promoting, developing and advancing the business prosperity and economic welfare of the county.” W. Va. Code § 7-12-7(a)(3) (emphasis added). The statute similarly provides that “this article shall be *liberally construed* as giving to the authority full and complete power reasonably required to give effect to the purposes hereof.” W. Va. Code § 7-12-15 (emphasis added).

The Supreme Court of Appeals has not had occasion to address the scope of these statutory powers in the context of potential funding measures like those you describe. Nevertheless, as our Office noted in a previous Attorney General Opinion, the statutory text is “broadly worded.” 2013 WL 3790633, at \*2 (W. Va. A.G. June 12, 2013). Further, a 1969 Attorney General Opinion considered a somewhat analogous matching-funds program between a county and the county development association. 53 W. Va. Op. Att’y Gen. 276, 1969 WL 100559 (1969). Relying in part on the statutes described above about development authorities’ purposes, that Opinion determined such an arrangement was lawful under the county’s statutory authority to “furnish” funding for “industrial development.” *Id.* at \*11. And since then, the Supreme Court of Appeals has made clear that commercial development generally—not industrial development alone—serves the same statutory ends. *See, e.g., State ex rel. Ohio Cty. Comm’n v. Samol*, 165 W. Va. 714, 718, 275 S.E.2d 2, 4 (1980) (“It does not require any lengthy discussion to realize that the renovation, expansion or creation of existing or new commercial projects gives much the same economic benefit to a community as would comparable activities in the industrial area. Each

serves to create or maintain employment and enhance tax revenues, and thereby operates to benefit the community and public in general.” (footnote omitted)).

Just as a county may exercise its authority to “furnish” funds for industrial development through a matching program with a development authority (whose purpose is to promote that very goal), we see no reason why a development authority cannot also use matching programs pursuant to its authority to “furnish money . . . to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity” in the county.” W. Va. Code § 7-12-2. The critical inquiry, then, is whether the relevant program advances the development authority’s purposes within the county.

With these principles in mind, we address the examples you provided our Office of potential matching-funding proposals. One type of program appears to fall squarely within the BCDA’s enumerated powers: “matching grant funding for recreational endeavors in the county.” As noted above, the operative statute provides that a development authority may “cooperate and act in conjunction with other organizations . . . in the promotion and advancement of . . . *recreational developments*” in Berkeley County. W. Va. Code § 7-12-2 (emphasis added).

The other programs you describe involve funding educational programs—and it is less clear from the statutory text whether the Legislature intended for the wide net of a development authority’s powers to include funding for higher-education initiatives. Unlike “business,” “economic,” “industrial,” and “recreational,” Section 7-12-2 does not include the word “educational.” Nevertheless, many statutes and cases make clear that education is tied closely to economic development. Our high court has emphasized, for example, “the crucial role played by institutions of higher education with regard to the social, *economic*, political, and cultural development of the general public.” *United Mine Workers of Am. Int’l Union by Trumka v. Parsons*, 172 W. Va. 386, 395, 305 S.E.2d 343, 351 (1983) (emphasis added). Similarly, Chapter 18B of the West Virginia Code (higher education) is replete with legislative findings about the “critical link between education and economic development.” W. Va. Code § 18B-3D-1(a)(2). For instance, the Legislature has declared that “[e]ducation[al] attainment is inextricably linked to economic development,” W. Va. Code § 18C-1-3(a)(1), and that “economic development in West Virginia” requires “collaborations developed between higher education and businesses and industry, particularly in the advancement of new and emerging technologies.” W. Va. Code § 18B-1F-1.

These authorities reflect the Legislature’s understanding that educational initiatives are often important facets of economic development, and thus that funding educational programs very likely falls within a development authority’s powers.

On the other hand, there are some statutes in which the Legislature—in contrast to the development authority statute—specifically mentions education. The statute creating the state-wide West Virginia Economic Development Authority, for instance, uses language similar to the county development authority statute, such as “develop[ing] and advanc[ing] the business prosperity and economic welfare of the state of West Virginia,” and “stimulat[ing] and assist[ing] in the expansion of all kinds of business activity which will tend to promote the business

development and maintain the economic stability of this state.” W. Va. Code § 31-15-3. Unlike here, that statute also specifically mentions support for “business incubator programs, *including the programs at institutions of higher education in the state.*” *Id.* (emphasis added).

A reviewing court might conclude that the Legislature’s reference to higher education in only one of these statutes indicates a deliberate choice not to include educational programs within a county development authority’s scope. *Cf. Young v. Apogee Coal Co., LLC*, 232 W. Va. 554, 561, 753 S.E.2d 52, 59 (2013) (“Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted.” (citations omitted)); *State v. Louk*, 237 W. Va. 200, 205, 786 S.E.2d 219, 224 (2016) (concluding that if the Legislature had intended a criminal statute to encompass specific conduct, it would have “writ[ten] that language into the statute,” particularly where it has done so “in a variety of other statutes”). Nevertheless, this is an isolated example compared to the many statutory provisions linking education and business growth. Combined with the generally broad scope of authority the Legislature granted to development authorities and its directive to interpret those powers liberally, W. Va. Code § 7-12-15, it is likely that the Legislature did not mean to exclude educational programs altogether. To be sure, some educational programs may be too far afield of a development authority’s statutory purposes—in at least one statute, for instance, the Legislature found that educational opportunities that advance economic development must focus on “relevancy, responsiveness to business . . . needs, and on the current and future work force needs of the state,” W. Va. Code § 18-2E-8. But in general, a standard like this should prove a low bar when establishing a nexus between a particular educational program and the county’s economic welfare.

Turning back to your remaining examples, we conclude that most should satisfy this standard. You suggested, for instance, that a business located or looking to set up shop in Berkeley County might apply for matching funds to help a local educational institution like BRCTC offer a training program in skills the employer seeks in future hires. The funds in this scenario could be used to cover the costs of acquiring necessary equipment or hiring a qualified instructor. This type of worker training program has a clear connection to promoting “the business prosperity and economic welfare” of Berkeley County” and “provid[ing] maximum opportunities for employment.” W. Va. Code § 7-12-2. Depending on the circumstances, it could also be said to be an “investment[ ] . . . in the locating of new business” or “assist[ance] [to an] existing business.” *Id.* So too for “providing scholarships to educate students in industrial and business-related fields,” and providing “matching grant funding for rehabilitative” or “work force related services.” These measures likewise appear to have a direct connection to advancing Berkeley County’s “economic welfare,” “maintain[ing] [its] economic stability,” and “improv[ing] the standard of living of [its] citizens.” *Id.*

As for the last potential program—“endowing a chair at an educational facility”—without additional detail, this type of grant may test the limits of the development authority’s powers. Unlike business-focused scholarships and programs, it is not readily apparent how close the connection would be between an endowment in an unspecified field and the current and future work force needs of Berkeley County. For some fields, the connection may be too attenuated. Yet

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for many others, we expect that the BCDA could make the necessary showing—particularly in the context of a community or technical school like BRCTC, whose curriculum is “integrated directly with the economic and workforce needs of the region.” Blue Ridge Community and Technical College, *Mission, Vision, & Core Values*, FY 2015-2020 Strategic Plan, <http://www.blueridgectc.edu/about-blue-ridge/mission-vision-statements/>.

In short, the BCDA’s broad purposes, combined with the Legislature’s repeated refrain elsewhere in the West Virginia Code that educational funding is critical to economic development, make it very likely that the BCDA could provide matching funding for most of the programs you describe consistent with its statutory authority.

Sincerely,



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