



State of West Virginia
Office of the Attorney General
State Capitol Complex
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Charleston, WV 25305

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April 2, 2019

The Honorable John B. McCuskey
State Auditor
State Capitol Complex
Building 1, Suite W-100
Charleston, WV 25305

Dear Auditor McCuskey:

You have asked for an Opinion of the Attorney General concerning a county commission's obligation to provide office space for the county surveyor in the county courthouse, at county expense. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advise upon questions of law . . . whenever required to do so, in writing, by . . . the [state] auditor." To the extent this Opinion relies on facts, it is based solely on the factual assertions set forth in your correspondence with the Office of the Attorney General.

In your letter, you explain that the Ritchie County Commission ("Commission") reached out to you with a question about the extent of its duties, if any, concerning allocation of office space in the Ritchie County courthouse. Your letter and the underlying correspondence you included state that the basement of the Ritchie County courthouse currently houses several different entities, including the county surveyor and a mapper in his employ. Specifically, the Commission asked you—and you in turn asked us*—whether the Commission is "required to provide office space for [a] mapper who is not paid by the Ritchie County Commission?"

* As noted above, the State Auditor is one of the state officers entitled by W. Va. Code § 5-3-1 to request an Opinion of the Attorney General, and from our communications with your office we understand that the Commission's request bears on the Auditor's specific responsibilities concerning county budget oversight, *see, e.g., id.* § 7-7-4. Nevertheless, because the Commission is the party most interested in this Opinion, we also emphasize that in the ordinary course our office responds to legal concerns from county officials by "consulting with the appropriate county

Your letter raises the following legal question:

To what extent does West Virginia law impose an affirmative obligation on a county commission to provide office space for an elected county officer and his or her assistants or other employees?

We conclude that West Virginia Code § 7-3-2 requires county commissions to provide office space as well as some material support to certain county officers, including the county surveyor. The precise contours of this requirement—including, as here, the amount of space a commission should afford an officer’s staff—are necessarily fact-specific, turning on what is necessary and suitable for the specific officer to perform his or her official duties.

Discussion

Article IX, Section 1 of the West Virginia Constitution provides that “[t]he voters of each county shall elect a surveyor of lands, a prosecuting attorney, a sheriff, and one and not more than two assessors, who shall hold their respective offices for the term of four years.” W. Va. Const. art. IX, § 1. As this Office has previously recognized, the Constitution and West Virginia Code make clear that “[e]ach county’s surveyor of lands”—colloquially, the “county surveyor”—“is a constitutional officer.” 51 W. Va. Op. Att’y Gen. 694, 1966 WL 87459 (1966); *see also* W. Va. Code §§ 3-10-8 (establishing procedure for filling vacancies in county offices, including that of “county surveyor”), 6-2-10 (requiring county officials, including the “surveyor of lands,” to post bond).

The West Virginia Code imposes a clear duty on county commissions to provide office space and material support for certain elected and appointed county officers, including those identified in Article IX, Section 1. Specifically, Section 7-3-2 provides that “[t]he county commission of every county, at the expense of the county, shall provide at the county seat thereof a suitable courthouse and jail, *together with suitable offices* for the . . . surveyor.” W. Va. Code § 7-3-2 (emphasis added). This same obligation extends to circuit court and other judges, clerks of court, the county assessor, the sheriff, the prosecuting attorney, and the superintendent of schools. *Id.*; *see also State ex rel. Smith v. Ritchie Cty. Court*, 147 W. Va. 521, 523, 129 S.E.2d 319, 320 (1963) (describing Section 7-3-2 as “a general provision relative to offices which a county [commission] is required to provide and maintain”). The Code further requires a county commission to “keep the courthouse . . . and other offices in constant and adequate repair, and supplied with the necessary heat, light, furniture, record books, and janitor service, and . . . with the necessary stationery and postage, and *other things as shall be necessary.*” W. Va. Code § 7-3-2 (emphasis added).

prosecuting attorney,” and we “channel[] our opinions relating to county and municipal problems directly through the county prosecuting attorney.” 49 W. Va. Op. Att’y Gen. 326, 1962 WL 75097 (1962). This practice reflects both our Office’s directive to “consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office,” W. Va. Code § 5-3-2, and prosecuting attorneys’ responsibility to provide legal services to county entities, W. Va. Code § 7-4-1. We have accordingly advised the Ritchie County Prosecuting Attorney of your request and will send his office a copy of this Opinion as well.

The plain language of the statute thus makes clear that the Commission must provide the county surveyor suitable offices and the services and supplies necessary to fulfill the surveyor's official duties. The details of the Section 7-3-2 requirement, however, present more difficult questions—such as how much space a commission must allot to each of the covered officials, and the degree to which a commission must account for an official's staff. These questions are largely fact-bound. Particularly given the lack of detail in your correspondence about the nature of the mapper's duties or the size of the office and amount of material support the Commission already supplies, we cannot dictate Section 7-3-2's precise contours in this case. Nevertheless, the statute yields several guiding principles:

As an initial matter, required office space need not always be in the county courthouse proper. Section 7-3-2 permits a county commission to “provide, at the expense of the county, a new or other building *or buildings* to be used for the courthouse and jail, or for either, *together with suitable offices, as aforesaid.*” W. Va. Code § 7-3-2 (emphases added). As our Office has previously explained, this language “implies that separate buildings may be utilized by the county [commission] to fulfill the requirements imposed on it” by Section 7-3-2, and specifically that it is appropriate to use “buildings other than the main Courthouse to fulfill any housing problem that may arise with regard to space available for the various functions of county government.” 56 W. Va. Op. Att’y Gen. 79, 1974 WL 174333 (1974).

Further, the fact that the Commission does not pay an individual does not itself erase the duty to provide office space. True, the Commission explains that the mapper works for the surveyor and is not compensated by the Commission, but the Commission does not pay the surveyor a salary, either. *See, e.g.*, W. Va. Code § 7-7-4 (prescribing salaries for some officers described in W. Va. Const. art. IX, § 1, but not surveyors). Because there is no exception in Section 7-3-2 for uncompensated officers, that factor alone is not dispositive.

As to other questions surrounding Section 7-3-2's application, a commission is obliged only to provide county officers “suitable” offices. W. Va. Code § 7-3-2. The term “suitable” means “fit and appropriate for the end in view,” *Deluxe Black's Law Dictionary* 1434 (6th ed. 1990), or “right or appropriate for a particular person, purpose, or situation,” *Concise Oxford English Dictionary* 1442 (11th ed. 2009). These definitions indicate that “suitable” is context-specific, turning on the particular “end” or “purpose” in question—here, the official's constitutional and statutory duties in light of the county's particular needs. Similarly, beyond the enumerated elements of support in Section 7-3-2, like utilities and furniture, the statute requires the commission to provide “other things as shall be necessary.” W. Va. Code § 7-3-2. The Supreme Court of Appeals has interpreted this language only once and—as with the dictionary definitions of “suitable”—this decision confirms that what qualifies as “necessary” is a fact-intensive question. *See SER Smith*, 147 W. Va. at 524, 129 S.E.2d at 321. There, the court held that county commissions must “pay for telephone services in offices furnished to judges, sheriffs, assessors, court clerks and prosecuting attorneys” because it could “hardly be contended in this day that telephones are not ‘necessary’ in the maintenance and operation of such offices.” *Id.*

From this choice of language it is evident that the Legislature sought to ensure that a county's constitutional officers would have both adequate physical space and sufficient material

support to discharge their official duties. The exact quantum of space and support needed to satisfy these requirements will vary, depending on the nature of the specific office and any relevant county-specific factors. What constitutes suitable office space for the prosecuting attorney of a county whose population requires a dozen or more assistant prosecutors, for instance, will be quite different from what prosecutors in smaller counties may need to fulfill their duties.

This focus on “suitable” and “necessary” support also strongly suggests that a commission cannot refuse to provide space for an official’s staff. County surveyors, specifically, have express statutory authority to, “with consent of the county [commission],” “appoint any person or persons [their] deputy or deputies.” W. Va. Code § 6-3-1(2), (4). Those deputies, in turn, may “perform and discharge any of the official duties of [the] principal.” *Id.* (emphasis added). Thus, the extent to which surveyors delegate authority to their staff will factor into how much office space is “suitable” for that surveyor, and “necessary” for the discharge of his or her official duties. This conclusion becomes more apparent in other contexts to which Section 7-3-2 applies: For example, it would be an odd result to interpret the law as requiring the county to provide only a single room of office space for a circuit judge, with no space for the law clerks and judicial assistants who provide essential support as the judge discharges her official duties. To be sure, there may be some county officers who do not delegate any of their official functions to deputies or other staff, but where that is not the case, the “suitable” and “necessary” inquiry does not appear to allow room to dismiss an officer’s staff from the Section 7-3-2 calculus.

Nevertheless, we also emphasize that determining how to allocate county resources—including available office space in the county courthouse or other public buildings—is one of the primary responsibilities of a county commission. *See* W. Va. Const. art. IX, § 11. The Supreme Court of Appeals has held that this constitutional prerogative “vest[s] the county commissions of this State with ‘a wide discretion in the superintendence and administration of the . . . fiscal affairs of their counties.’” *State ex rel. Farley v. Spaulding*, 203 W. Va. 275, 282, 507 S.E.2d 376, 383 (1998) (citation omitted). And as this Office has previously recognized, the intersection between the state constitution and Section 7-3-2 affords a county commission considerable discretion to determine “what it considers to be adequate office space and equipment,” to the extent that a commission likely “cannot be compelled, in the absence of a court action,” to provide a greater allocation. 52 W. Va. Op. Att’y Gen. 562, 1968 WL 94093 (1968). A county commission must of course honor Section 7-3-2’s purposes when exercising this discretion—a commission likely could not, for example, adopt a blanket rule for all county officers with no consideration of the scope of an individual office’s duties—but it also need not acquiesce to every request for space or resources an officer may make. *See also id.* (“[I]t is clear that a county [commission] had the right to determine the [monetary] amount . . . which it considered necessary in order to provide [an agency] with adequate quarters in such county [commission’s] county.”). Similarly, a county commission may revisit issues of office allotments on a periodic basis to account for any changed circumstances, provided that any modifications are consistent with Section 7-3-2.

In light of the discretion afforded to county commissions in this arena and the fact-bound nature of the statutory analysis, it is beyond the scope of this Opinion to resolve how much space the Commission must afford to the surveyor and any staff who assist in fulfilling the surveyor’s

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official duties. This question turns on what is “suitable” and “necessary” based on the nature of the surveyor’s duties and other context-specific factors, guided by the principles discussed above.

Sincerely,



Patrick Morrissey
Attorney General

Lindsay See
Solicitor General

Zachary Viglianco
Assistant Attorney General

cc: Samuel Rogers II, Ritchie County Prosecuting Attorney