



State of West Virginia
Office of the Attorney General

Patrick Morrisey
Attorney General

January 20, 2015

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

Brian Farkas
Executive Director
West Virginia Conservation Agency
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

Dear Mr. Farkas:

You have asked on behalf of the Commissioner of Agriculture, in his capacity as the Chairman of the State Conservation Committee, for an Opinion of the Attorney General pertaining to whether West Virginia Conservation Districts have the legal authority to award scholarships using public funds. 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 . . . any . . . state officer, board, or commission.” To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your letter to the Attorney General’s Office.

According to your letter, a question has arisen concerning scholarships that have been administered by the State’s Conservation Districts. You explain that Conservation Districts have awarded scholarships to “individuals and groups” for some period of time, and “encompass such activities as school tuition, entry fees, workshop expenses or direct cash payments.” These scholarships are given “for various reasons,” but “are usually tied to agriculture or conservation activities and programs.” In two recent opinions requested by Conservation Districts, however, the West Virginia Ethics Commission noted that it was “unable to find express or implied authority to use the Requester’s public funds for the purpose of awarding scholarships.” A.O. 2012-42 at 3 (addressing whether a Conservation District “may expend public funds to award a \$500.00 scholarship to a District supervisor’s child who resides with his parents”); *accord* A.O. 2013-06 at 4 n.8 (noting that the Ethics Commission has “found no explicit statutory authorization for a District to expend its public money on scholarships”). The Ethics Commission specifically recommended that an opinion be sought from this Office “as to whether Conservation Districts are authorized to grant scholarships.” A.O. 2012-42 at 3.

Your letter raises the following legal question:

Are West Virginia Conservation Districts legally authorized to award scholarships using public funds?

The governing provisions of law are found in West Virginia Code § 19-21A-1 *et seq.* Section 2 declares it to be “the policy of the Legislature” to “provide for the conservation of the soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization and disposal of water.” W. Va. Code § 19-21A-2(d). To that end, the law recognizes the formation and existence of Conservation Districts throughout the State, which have numerous powers relating to “soil erosion and floodwater and sediment damage.” *Id.* § 19-21A-8(1). The Conservation Districts are overseen in a way by the State Conservation Committee, which is permitted to offer assistance to District supervisors and to “allocate money” to the Districts “to assist them in carrying on their operations.” *Id.* § 19-21A-4(g)(1), (6).

The various powers of a Conservation District are specific and comprehensively set forth. The vast majority relate to: collecting information related to soil erosion, floodwater, and sediment damage; remedying identified problems; or preventing future problems. These powers include:

- Conducting “surveys, investigations and research” on soil erosion, floodwater, and sediment damage, as well as the conservation, development, utilization, and disposal of water, *id.* § 19-21A-8(1);
- Conducting “demonstrational projects,” *id.* § 19-21A-8(2);
- Enacting “preventive and control measures and works of improvement within the district,” *id.* § 19-21A-8(3);
- Acquiring property, *id.* § 19-21A-8(5);
- Making available “equipment, fertilizer, seeds and seedlings,” *id.* § 19-21A-8(6);
- “Construct[ing], improv[ing], operat[ing] and maintain[ing] such structures as may be necessary or convenient” to fulfill the purposes of the article, *id.* § 19-21A-8(7);
- Developing “comprehensive plans for the conservation of soil resources,” the prevention of soil erosion and prevention of flooding, and conservation of water resources, *id.* § 19-21A-8(8); and
- Taking over and administering “any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof,” located within the District’s boundaries, under certain conditions, *id.* § 19-21A-8(9).

A number of ancillary powers are also given, such as the authority to enter into contracts, *id.* § 19-21A-8(13), the power to sue and be sued, *id.* § 19-21A-8(10), and the ability to require

contributions from those receiving benefits from the District's work, *id.* § 19-21A-8(11). Unlike some agencies or boards created by the Legislature, a Conservation District is *not* granted the residual power to "do all things which are necessary to further the purposes and intent of this article." W. Va. Code § 31-15A-12 (concerning the water development authority).

We do not find among the Districts' enumerated powers the authority to award the scholarships in question using public funds. A review of all of the governing Code for the Districts, as well as the legislative rules enacted pursuant to that authority, reveal only one grant of authority concerning the expenditure of funds. A Conservation District is permitted

[t]o cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion-control and prevention operations and works of improvement within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article.

W. Va. Code § 19-21A-8(4).

This enumerated power does not resemble the language that the Legislature typically uses to authorize the awarding of scholarships. Throughout the Code, the Legislature has created and explicitly authorized "scholarships." For example, scholarships are provided for the dependent children of individuals who are killed in the line of duty while serving the State in a law enforcement or first responder capacity. *See* W. Va. Code §§ 5-10-27 ("a scholarship to be applied to the career development education"), 7-14D-20 (same), 8-22A-22 (same), 15-2-33 (same), 15-2A-12 (same), 16-5V-25 (same). Other expressly created scholarships include the Promise Scholarship, *see* W. Va. Code § 18B-17-5, the Underwood-Smith Scholarship, *see* W. Va. Code § 18C-4-1, and the Health Sciences Scholarship Fund, *see* W. Va. Code § 18C-3-3. *See also* W. Va. Code §§ 17-2A-4b (granting explicit authority for the award of scholarships from state funds to address the "wide and continuing need for trained personnel in the division of highways of this state"), 18-10H-3 (establishing a "scholarship program for outstanding secondary vocational-technical education graduates to pursue additional post-secondary college work in a related career or technical field"), 18C-3-4 (authorization for the administration of the Nursing Scholarship Program and setting forth its parameters). In contrast, the Conservation District's authority to expend funds does not specifically mention or authorize the awarding of scholarships.

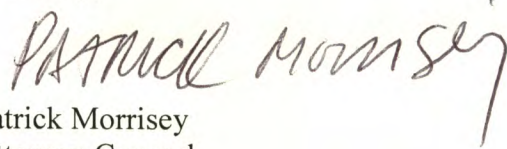
Moreover, even if this grant of authority could be construed as permitting the awarding of scholarships, the facts set forth in your letter do not satisfy the statutory limitations. The "furnish[ing of] financial or other aid" to a private person is permitted only where the recipient is an "occupier of lands within the district" and where the funds will assist the recipient "in carrying on of erosion-control and prevention operations and works of improvement within the district." W. Va. Code § 19-21A-8(4). Your correspondence states merely that the scholarships in question are provided "for various reasons" and are "usually tied to agriculture or conservation activities and programs." Even under the most generous reading, this description does not

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suggest that the outlay of funds is properly restricted to “occupier of lands within the district” or to soil-conservation efforts “within the district.”

In sum, we must conclude that the West Virginia Conservation Districts lack authority to award the scholarships in question using public funds. Should you have further questions, please do not hesitate to contact this Office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patrick Morrissey". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Patrick Morrissey
Attorney General

Elbert Lin
Solicitor General