



State of West Virginia
Office of the Attorney General

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Attorney General

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The Honorable Ralph A. Lorenzetti, Jr.
Prosecuting Attorney
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P.O. Box 729
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Dear Prosecutor Lorenzetti:

You have asked for an Opinion of the Attorney General regarding the Jefferson County Board of Health's participation in the West Virginia Division of Personnel ("WVDOP") Merit System. 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 on the factual assertions set forth in your recent correspondences with the Office of the Attorney General.

According to your letter, in the summer of 2014 "every local Board of Health in West Virginia was required by the WVDOP to sign a standard service level agreement" in order to continue to participate in the WVDOP's merit system. You further explain that the service level agreement "was required pursuant to an agreement executed between the State Department of Health and the WVDOP." As the statutory attorney for the Jefferson County Board of Health, you were provided a copy of both that agreement and the service level agreement for review. Based upon that review you have now sought this Opinion to address your concerns as to whether the Board of Health must enter into a service level agreement with the WVDOP to ensure its employees are covered by the WVDOP Merit System.

Your letter raises three legal issues, which are addressed in turn below.

(1) Is a local board of health statutorily obligated to utilize the WVDOP Merit System?

(2) May the West Virginia Department of Health and Human Resources, Bureau of Public Health enter into an agreement with the WVDOP requiring the provision of merit system services to local boards of health?

(3) May the WVDOP require local boards of health who utilize its merit system to reimburse the WVDOP for the costs of providing services under the merit system?

The county commission of each county in West Virginia is required to establish a county board of health, if there is no other local board of health “established and responsible for public health” in that county. W.Va. Code § 16-2-3. A county board of health “shall be organized pursuant to and with the powers and duties prescribed” by W.Va. Code §§ 16-2-1 *et seq.* *Id.* You have indicated that the Jefferson County Board of Health is one such entity. As such, it is both created and governed by the provisions of W.Va. Code §§ 16-2-1 *et seq.*

Question One: Is a local board of health statutorily obligated to utilize the WVDOP Merit System?

Local boards of health are “charged with protecting the health and safety, as well as promoting the interest of the citizens of West Virginia.” W.Va. Code § 16-2-11(c). To accomplish this mission, local boards of health are statutorily provided a variety of powers. One such power is to “employ or contract any technical, administrative, clerical or other person” necessary to carry out the board’s work. W.Va. Code § 16-2-11(b)(2). Further, “eligible staff employed” by a board must be covered by a merit system. *Id.*

Under West Virginia Code § 16-2-11(b)(2), local boards of health have a choice as to how to establish a merit system. First, the boards can choose that “eligible staff employed by the board shall be covered by the rules of the division of personnel under section six, article ten, chapter twenty-nine of this code.” W.Va. Code § 16-2-11(b)(2). This means the local board of health would be covered by WVDOP’s merit system. Second, “*in the alternative and with the consent and approval of the appointing authority*, [the local boards may] establish and adopt a merit system for its eligible employees.” *Id.* (emphasis added). Such an “alternative” merit system “may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority, adopting and making applicable to the local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable.” *Id.*

As a result, a local board of health is statutorily required to utilize *some* merit based system for its eligible employees, it is not statutorily required to utilize the WVDOP merit system. Instead, a board of health has the option of either using the WVDOP merit system or establishing and adopting its own merit system, assuming all statutory conditions are satisfied.

Question Two: May the West Virginia Department of Health and Human Resources, Bureau of Public Health enter into an agreement with the WVDOP requiring local boards of health to enter into further agreements with WVDOP?

In January 2014, the WVDOP and the West Virginia Department of Health and Human Resources, Bureau of Public Health (“State Department of Health”) entered into an “Agreement Regarding Local Health Departments.” The Agreement serves “as the basis for the establishment of Service Level Agreements (“SLAs”) between [WVDOP] and Local Health Departments.” The Agreement was entered into pursuant to West Virginia Code § 29-6-17(a), which provides in relevant part: “Subject to the approval of the board, the director [of the WVDOP] may enter into an agreement with the state department of health for the inclusion of personnel of local health departments under the classified service system established by this article.” *Id.* The Agreement—which the State Department of Health entered into pursuant to this authority—merely provides that any SLAs that local boards of health enter into with WVDOP “will enable the provision of the services and facilities of the WVDOP to local health departments in the administration of personnel on merit principles, and further the ability of local health departments to participate in the classified service.”

Accordingly, the premise of your question—whether the State Department of Health can “enter[] into an agreement that *requires* additional agreements with the local boards of health”—does not apply to the Agreement. The Agreement does not “require[] additional agreements” from local boards of health; it merely creates the framework within which local boards of health can contract with WVDOP, if those boards choose to use WVDOP’s services. That is an entirely permissible exercise of the State Department of Health’s authority under Section 29-6-17(a).

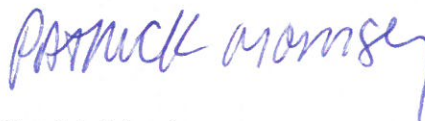
Question Three: May the WVDOP require local boards of health who utilize its merit system to reimburse the WVDOP for the costs of providing services under the merit system?

The Agreement further provides a fee schedule applicable to all local health boards, where the board voluntarily chooses to enter into SLAs with WVDOP. Section 29-6-17(a) specifically provides that “[a]ny . . . agreement[]” entered into between *any* “municipality or other political subdivision of the state” and WVDOP “shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the director.” *Id.* (emphases added). As your letter notes, a local board of health is a “political subdivision.” *Accord* W.Va. Code §29-12A-3(c) (defining “[p]olitical subdivision”)

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Accordingly, under the plain terms of Section 29-6-17(a), if a local board of health chooses to enter into an SLA with WVDOP, in order to obtain WVDOP's services, that agreement *must* include a provision to reimburse WVDOP for the services provided to the board. The fact that the Agreement provides a fee schedule that will apply to any SLA entered into between a local board and WVDOP is thus not only permissible, but entirely consistent with the statutory mandate. There appears to be no basis in law or policy why a local board should be permitted to receive the service of the WVDOP for free, where identical WVDOP services must be reimbursed by any other "municipality or other political subdivision of the state."

Sincerely,



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