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June 7, 1988

The Honorable Mike Magro, Jr.  
City Attorney for the City of Morgantown  
Magro and Magro  
212 High Street  
Morgantown, West Virginia 26505

Dear Mr. Magro:

This office is in receipt of your letter requesting the opinion of the Attorney General regarding the proposal of the City of Morgantown to pledge certain revenues to the payment of bonds contemplated to be issued by the city. The factual summary provided with the letter describes the proposed bond issue in some detail. The City of Morgantown proposes to acquire, construct, and equip a municipal building with an attached parking garage. The municipal building will include offices for the police department, two jail cells, a meeting room, offices for the fire department, offices for the parking authority, a waiting room, and a municipal court. The city proposes to finance the cost of the building by issuing bonds to be retired over a period of thirty (30) years. The bonds will be retired, in part, by revenues generated by the parking garage as well as by metered parking spaces located within the City of Morgantown. However, the revenues generated by parking fees will not be sufficient to service the debt created by the issuance of the bonds. In order to provide the additional monies necessary to service this debt, the City of Morgantown further proposes to dedicate revenues generated by the imposition of fines and fees by the Morgantown Municipal Court. The sum of parking fees and fines generated by the Municipal Court is anticipated to be more than adequate to service the debt created by the bond issue.

The questions presented in your letter are as follows:

"1. Whether fines imposed by a municipal court may legally be considered 'tolls, fees, rents, special assessments or charges other than taxation generated by the municipal complex which

would house the municipal court so as to make or contribute towards making such municipal complex 'self-supporting' within the meaning of Chapter 8, Article 16, Section 1 of the Code of West Virginia of 1931 as amended. (Hereinafter Code)

"2. If the answer to the first question is yes, whether the term of revenue bonds, the payment of which is secured in part by a pledge of municipal court fines and the proceeds of which are to be used to construct a municipal building complex to house, among other things, municipal court and certain jail facilities, is limited to twenty years by the operation of W. Va. Code § 8-16-3; and

"3. If the answer to the first question is no, whether a municipality may issue a separate series of bonds for the municipal complex only (which will include some jail cells, but which will include other facilities as well), and pledge to the payment of debt service on such bonds fines imposed by its municipal court for a period not to exceed twenty years."

In order for the City of Morgantown to lawfully issue bonds creating a debt for the construction of a municipal building with an attached parking garage, the city must have an express statutory authority to do so or an implied authority created to effectuate the purpose of an express statutory authority.

"A municipal corporation is a creature of the State, and can only perform such functions of government as may have been conferred by the Constitution, or delegated to it by the law-making authority of the State. It has no inherent powers, and only such implied powers are necessary to carry into effect those expressly granted." \*\*\* as  
[Citations omitted.] Toler v. City of Huntington, 153 W. Va. 313, 168 S.E.2d 551 at 554 (1969).

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Implied powers must not be merely convenient but must be indispensable to the accomplishment of objects and purposes expressly authorized by statute. Maxey v. City of Bluefield, 151 W. Va. 302, 151 S.E.2d 689 (1966). ✓

Express authority for the construction of public works financed by the issuance of bonds by a municipality is found in

Code 8-16-1 et seq. Code 8-16-1 provides in pertinent part, as follows:

"'[P]rojects' shall be construed to mean and include the construction \* \* \* and operation of jails, jail facilities, municipal buildings, police stations \* \* \* motor vehicle parking facilities \* \* \* where such works or projects will be made self-supporting, and the cost thereof, together with the interest thereon, will be returned within a reasonable period, not exceeding ~~forty~~ years, by means of tolls, fees, rents, special assessments or charges other than taxation \* \* \*."

Code 8-16-1 does not expressly mention fees. Code 8-16-1 permits municipalities to dedicate certain enumerated revenues to retire bonds issued for the construction of public works. These revenues are "tolls, fees, rents, special assessments or charges other than taxation." In order for the City of Morgantown to pledge fines generated by the municipal court to retiring the proposed bond issue, fines must be a sub-category of "charges other than taxation."

Black's Law Dictionary (5th Ed., 1978) defines fine as follows:

"Fine, v. To impose a pecuniary punishment or mulct. To sentence a person convicted of an offense to pay a penalty in money.

"Fine, n. A pecuniary punishment imposed by lawful tribunal upon person convicted of crime or misdemeanor. A pecuniary penalty. It may include a forfeiture or penalty recoverable in a civil action, and, in criminal convictions, may be in addition to imprisonment."

The courts have adopted the definition found in Black's Law Dictionary. A fine is a sum of money exacted of a person guilty of a crime. State v. Rumfelt, 241 N.C. 375, 85 S.E.2d 398 (1955). A fine is a money sanction imposed upon an individual for the violation of the law. Vincent v. Preiser, \_\_\_ W. Va. \_\_\_, 338 S.E.2d 398 (1985).

In contrast, Black's Law Dictionary defines charges as follows:

"Charge, v. To impose a burden, duty, obligation, or lien; to create a claim against property; to assess; to demand; to accuse; to instruct a jury on matters of law. To impose a tax, duty, or trust. In commercial transactions, to bill or invoice; to purchase on credit. ~~To indict or~~ <sup>ic</sup> formerly accuse.

*In criminal law,*

"Charge, n. An incumbrance, lien, or claim; a burden or load; an obligation or duty; a liability; an accusation. A person or thing committed to the care of another. The price of, or rate for, something. See also Charged; Charges; Floating charge; Rate; Surcharge."

Again, the courts have adopted the definition found in Black's Law Dictionary. Seabrook Island Property Owners Ass'n. v. Pelzer, 292 S.C. 343, 356 S.E.2d 411 (1987); State v. Unicap, 347 Mo. 382, 147 S.W. 2d 627 (1941); State v. Joseph, 137 La. 52, 68 So. 211 (1915). Our Supreme Court has recognized the authority of municipalities to charge fees for service and protection and has specifically found such fees for services rendered to be charges and not taxes. City of Charleston v. Board of Education of Kanawha County, 158 W. Va. 141, 209 S.E.2d 55 (1974).

In construing a statute, the first rule is to ascertain the meaning of the words used. Words used in a statute are to be given their ordinary and natural meaning. State v. Cole, 160 W. Va. 804, 238 S.E.2d 849 (1977). Analysis of the plain language of Code 8-16-1 reveals that the words "charges other than taxation" are intended to mean fees for services and protection. A fine is a money sanction imposed for the violation of a law and is clearly not a "charge other than taxation."

The conclusion reached above is reinforced when one analyzes Code 8-16-1 in pari materia with other statutes. It is an accepted rule of construction that statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactment. Kime v. Bechtold, \_\_\_ W. Va. \_\_\_, 342 S.E.2d 147 (1986); Manchin v. Dunfee, \_\_\_ W. Va. \_\_\_, 327 S.E.2d 710 (1984). Code 8-16-1 makes no specific mention of fines. However, municipalities are given express authority to issue bonds creating a debt to be serviced by revenues derived from fines and fees in Code 8-16-3. Code 8-16-3 provides in pertinent part as follows:

"When the municipal public works is a jail facility used for municipal prisoners, any municipality involved therein shall have the power and authority, in order to help finance the same, to pledge, for a period not to exceed twenty years, the proceeds derived from the imposition of fines and fees."

A statute limiting a thing to be done in a particular set of circumstances or manner implies that it shall not be done otherwise. Expressio unius est exclusio alterius. Lane v. Board of Education of Lincoln County, 147 W. Va. 737, 131 S.E.2d 165 (1963). A reading of Code 8-16-1 in pari materia with Code 8-16-3 reveals that it was the intent of the Legislature to permit municipalities to pledge the resources generated by the imposition of fines and fees for a period of not more than twenty years only for jail facilities used for municipal prisoners. (20)

It is accordingly the opinion of the Attorney General that fines generated by a municipal court may not be pledged to retire bonds issued to finance the construction of a municipal building for the reason that municipalities do not have an express or an implied power to do so. Inasmuch as municipalities may not have pledge fines to the construction of municipal buildings, your second question is rendered moot.

Code 8-16-3 provides municipalities with an express authorization to finance the construction of jail facilities used for municipal prisoners by the issuance of bonds serviced by fines and fees for a period of not more than twenty years. Your third question revolves around what portion, if any, of the municipal building with parking garage is a jail facility used for municipal prisoners.

The first rule of construction is to ascertain the meaning of the words used in the statute. Black's Law Dictionary (5th Ed. 1979) defines jail as follows:

"Jail. A gaol; a prison; a building designated by law, or regularly used, for the confinement of persons held in lawful custody. A place of confinement that is more than a police station lockup and less than a prison. It is usually used to hold persons either convicted of misdemeanors (minor crimes) or persons awaiting trial."



The courts have adopted the definition found in Black's Law Dictionary. McArthur v. Campbell, 225 Ark. 172, 280 S.W.2d 219 (1955); Denham v. Commonwealth, 119 Ky. 476, 84 S.W. 533 (1911).

Black's Law Dictionary (5th Ed. 1979) defines facility as follows:

"Facility. Something that is built or installed to perform some particular function, but it also means something that promotes the ease of any action or course of conduct. Raynor v. American Heritage Life Ins. Co., 123 Ga.App. 247, 180 S.E.2d 248, 250. See also Facilities."

The courts have defined the word facility as a broad term which is intended to include anything of whatever nature which aids or makes easier the performance of an activity. Extendicare v. State Coordinating Council, 216 Kan. 527, 532 P.2d 1119 (1975); Hartford Electric Light Co. v. Federal Power Commission, 131 F.2d 953 (2nd Cir. 1942). The word facility has been interpreted to include a very broad range of items: offices [Southwestern Bell v. City of Kountz, 543 S.W.2d 871 (Texas Civil App. 1976)]; telephones [United States v. Smith, 209 F. Supp. 907 (E.D. Ill. 1962)]; grounds [Chess v. Wardman, 635 F.2d 1310 (8th Cir. 1980)]; a lounge [Knoll Golf Club v. United States, 179 F. Supp. 377 (D.N.J. 1959)]; leasehold improvements [C.I.R. v. Valley Morris Plan, 305 F.2d 610 (9th Cir. 1962)]. The word facilities is much broader than building. See People ex rel. Schlaeger v. Burns Brothers, 392 Ill. 153, 64 N.E.2d 365 (1945).

In construing a statute, every word used in the statute must be given some effect. Wilson v. Hix, 136 W. Va. 59, 65 S.E.2d 717 (1951); Wooddell v. Daily, 160 W. Va. 64, 230 S.E.2d 466 (1976). It is not permissible to subtract words from a statute. State v. General Daniel Morgan Post No. 548, 144 W. Va. 137, 107 S.E.2d 353 (1959). Accordingly, in resolving whether the municipal building with parking garage may be financed in whole or in part by fines, effect must be given to both jail and facility.

It is the opinion of the Attorney General that fines generated by a municipal court may be dedicated to retire a debt created for a bond issue for not more than twenty years which finances the construction of a municipal building to the

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extent that said municipal building constitutes a jail or facility, the use or establishment of a jail which houses municipal prisoners.

Very truly yours,

CHARLES G. BROWN  
ATTORNEY GENERAL

By  Solicitor  
STEPHEN D. HERNDON

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