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March 15, 1989

The Honorable A. James Manchin
Treasurer of State
Building 1, Suite E-147
State Capitol
Charleston, West Virginia 25305

Dear Treasurer Manchin:

By letter dated February 24, 1989, you requested an opinion of this office. Your letter sets forth the following:

"On October 15, 1986, the State Board of Investments received a request from the Regional Jail and Prison Authority for a loan in an amount not to exceed \$35,000,000.00 as authorized by Code [Section] 31-20-5B(d).

"This request was considered and approved by the Board at its December 29, 1986, meeting. As of this date, the Authority has exercised only \$100,000.00 of the borrowing authority granted by the Board.

"Code [Section] 31-20-5B(i) states that the authority of the Board to make loans under this section expired on July 1, 1987. Since the Authority has not exercised the prerogatives by this Code provision and the Board, it would appear that the authority to borrow such funds expired on July 1, 1987.

"You are requested to provide the Board with your opinion as to whether our understanding of this Code provision is correct."

The West Virginia Regional Jail and Prison Authority (hereinafter "the Authority") was created in 1985 by W.Va. Code Chapter 31, Article 20, Section 1 et seq. (hereinafter "Code"). The powers and duties of the Authority are outlined in Code 31-20-5. Thereby, the Authority is directed to complete a comprehensive study of all prison and jail facilities in this state and then submit a plan to the Governor on the establishment

of regional jails and the acquisition, construction or renovation of facilities for prisons.

To finance the construction or renovation of regional jail or prison facilities, the Authority by Code 31-20-5(r) is given the power to borrow money from the consolidated fund, "in accordance with the provisions of section five-b of this article." Code 31-20-5b authorizes the West Virginia Board of Investments (hereinafter "Board") to make interest-bearing loans to the Authority. Subsection (d) thereof establishes that such loans shall not at any time exceed thirty-five million dollars in the aggregate principal amount outstanding. However, subsection (i) of 31-20-5b provides as follows:

"The authority of the Board of Investments to make loans under the provisions of this section shall expire on the first day of July, one thousand nine hundred eighty-seven."

Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation. Syllabus Point 2, State v. Elders, 152 W.Va. 571, 165 S.E. 2d 108 (1968). Accordingly, it must be presumed that the Legislature intended that the authority of the Board to make loans to the Regional Jail and Prison Authority would expire on July 1, 1987.

This interpretation is buttressed by the provisions of Code 31-20-5(m), which provides that the Authority shall have the power:

"To borrow money and to issue its negotiable bonds, security interests or notes and to provide for and secure payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold and dispose of any of its bonds, security interests or notes: Provided, that no bond or other obligation, except for loans for the seven facilities provided for under the provisions of section five-b of this article, may be issued or incurred unless and until the Legislature by concurrent resolution has approved the purpose and amount of each project for which proceeds from the issuance of such bond or other obligation will be used: Provided, however, that the authorization for loans under the provisions of section five-b of this article is in lieu of the issuance of bonds as authorized by this section, and any provisions of this code to the contrary notwithstanding, or any authorizing language contained in any concurrent resolution of the Legislature to the

contrary notwithstanding, the authority shall not issue bonds as herein provided until and after the first day of July, one thousand nine hundred eighty-seven."
[Emphasis added.]

Reading the above provisions in pari materia, it becomes apparent that the Legislature's intent was to allow the Authority to borrow funds from the consolidated fund pursuant to Code 31-20-5b only until July 1, 1987, as only after that date could it issue the bonds provided for by Code 30-21-5(m).

The Authority's request to borrow funds not to exceed \$35,000,000.00 was approved by the Board on December 29, 1986. The Authority only borrowed \$100,000.00 of that amount. The Authority may have requested further loans in an aggregate amount not to exceed the authorized grant, but such requests could only be fulfilled by the Board prior to July 1, 1987. Thereafter, as the Code sets forth, the Board is specifically without authority to make such loans.

In summary, we conclude that the State Board of Investments is without authority to make loans to the Regional Jail and Prison Authority under the provisions of Code 31-20-5b as of July 1, 1987, even though the Board authorized the making of loans to the Authority on December 29, 1986 in an amount not to exceed \$35,000,000.00 and even though the Authority only borrowed \$100,000.00 of the authorized amount.

Very truly yours,

CHARLES G. BROWN
ATTORNEY GENERAL



By: BETH HUNTER
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CGB:BH:jw