



State of West Virginia
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June 1, 2026

The Honorable David A. Wandling
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Dear Prosecutor Wandling:

You have asked for an Opinion of the Attorney General about how the Logan County Commission may obtain financial records from volunteer fire departments. This Opinion is issued under 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.” When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence and discussions with the Attorney General’s Office.

You explain that your office has received and reviewed the Attorney General’s September 4, 2025 opinion letter to the Mineral County Prosecuting Attorney concerning the Mineral County Commission’s authority to audit VFDs (“Mineral County Letter”). *See* W. Va. Att’y Gen., Opinion Letter to the Honorable Charlie B. Johnson III (Sept. 4, 2025), 2025 WL 2655054. In that letter, we concluded that the Mineral County Commission could not audit VFDs, require VFDs to submit to a financial review, or withhold levy disbursements from VFDs for failure to submit to an audit. *Id.* at *1. We also concluded that the Mineral County Commission could request that the Legislative Auditor or the State Auditor perform an audit of any VFD about which the County Commission had concerns. *Id.*

Still, the Logan County Commission wants to inspect VFDs’ financial information to protect the county’s public fisc. So, you explain that your office needs clarification on the following three questions related to the Mineral County Letter:

- (1) *Did the Legislature’s July 2025 amendment to West Virginia Code § 8-15-7a—granting the Legislative Auditor audit power over VFDs—divest the State Auditor of that same authority?*

- (2) *May the County Commission ask VFDs to voluntarily turn over financial information?*
- (3) *Are VFDs subject to West Virginia's Freedom of Information Act?*

We conclude first that the Legislative Auditor and State Auditor both have audit power over VFDs. The 2025 amendment to West Virginia Code § 8-15-7a did not divest the State Auditor of its independent authority to audit VFDs. We also conclude that the Logan County Commission may ask VFDs to turn over financial information on a voluntary basis. Finally, we conclude that government-formed VFDs are subject to FOIA, and in most cases, citizen-formed VFDs are, too.

DISCUSSION

I. Both the State Auditor and the Legislative Auditor may audit VFDs.

West Virginia Code § 8-15-7a subjects VFDs to regular audits and financial examinations. As enacted in 2019, Section 8-15-7a put the State Auditor in charge of those audits. W. VA. CODE § 8-15-7a (eff. June 4, 2019) (“The Auditor shall have the authority and the duty to make a regular review of the finances of each volunteer fire company constituted under the provisions of this article.”). In 2025, the Legislature amended Section 8-15-7a to place that audit power with the Legislative Auditor. *See* S.B. 500, 2025 Leg., Reg. Sess. (W. Va. 2025); W. VA. CODE § 8-15-7a; *see also* Mineral County Letter, 2025 WL 2655054, at *3.

The 2025 amendment, however, does not eliminate the State Auditor’s separate authority to conduct audits of VFDs. The State Auditor is empowered to “[m]ak[e] annual or special financial and compliance examinations or audits of local government offices.” W. VA. CODE § 6-9-11(a)(1). That authority is broad and is not limited to any particular program or funding stream.

As we explained in the Mineral County Letter, VFDs appear to fall within the category of “local government offices” included in Section 6-9-11. The statute defines “local government office” to include “any other authority, board, commission, district, office, public authority, public corporation or other instrumentality of a county ... or municipality.” W. VA. CODE § 6-9-11(a). VFDs have repeatedly been treated as quasi-governmental entities: they are extensively regulated by statute, provide services to the general public, and often receive public funds. *See Shepherdstown Volunteer Fire Dep’t v. State ex rel. State of W. Va. Hum. Rts. Comm’n*, 172 W. Va. 627, 635-36, 309 S.E.2d 342, 351 (1983) (describing volunteer fire departments as “quasi-governmental bodies”). The Legislature has likewise recognized VFDs as governmental instrumentalities in other contexts. *See, e.g.*, W. VA. CODE § 29-12A-3(c) (including “volunteer fire departments ... recognized by an appropriate public body and authorized to perform a government function” within the definition of “political subdivision”). For these reasons, VFDs are subject to the State Auditor’s audit authority under Section 6-9-11(a)(1).

Nor does the 2025 amendment to Section 8-15-7a impliedly repeal or divest that independent authority. West Virginia courts disfavor implied repeals and harmonize statutes where reasonably possible. *Russell v. Town of Granville*, 237 W. Va. 9, 12, 784 S.E.2d 336, 339 (2016);

syl. pts. 1 & 2, *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960). Here, the provisions can be read together without conflict: Section 8-15-7a establishes a specific, recurring audit regime for VFDs administered by the Legislative Auditor, while Section 6-9-11(a)(1) separately authorizes the State Auditor to conduct annual or special audits of local government offices, including VFDs, when circumstances warrant. And because no conflict exists, the specific-over-general canon does not apply. Syl. pt. 10, *Barber v. Camden Clark Mem'l Hosp. Corp.*, 240 W. Va. 663, 815 S.E.2d 474 (2018) (“The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled.” (cleaned up)). *But see State ex rel. State v. Young*, No. 25-371, 2026 WL 938576, at *6 (W. Va. Apr. 7, 2026) (applying specific-over-general canon despite finding “the statutes are not in conflict”).

If the Legislature intended to make the Legislative Auditor’s authority exclusive, it could have said so expressly (for example, by using “exclusive” language, adding a “notwithstanding” clause, or amending Section 6-9-11). The 2025 amendment did none of those things. And “we are obliged not to add to statutes something the Legislature purposely omitted.” *Perito v. Cty. of Brooke*, 215 W. Va. 178, 184, 597 S.E.2d 311, 317 (2004) (cleaned up).

Accordingly, we conclude that the Legislative Auditor has authority under Section 8-15-7a to audit VFDs as part of the statutory audit program, and the State Auditor retains independent authority under Section 6-9-11(a)(1) to conduct audits of VFDs as local government offices.

II. The County Commission Can Ask the VFD to Voluntarily Provide it With Financial Records.

We pointed out in the Mineral County Letter that county commissions still “might ... find ... ways” other than audits by the State Auditor or Legislative Auditor “to bring to light financial malfeasance, including public calls for financial disclosure.” Mineral County Letter, 2025 WL 2655054, at *4. A request for voluntary disclosure is one permissible “other way[.]” *Id.*

County commissions are “created by statute, and possessed only of such powers as are expressly conferred by the Constitution and legislature, together with such as are reasonably and necessarily implied in the full and proper exercise of the powers so ... given.” Syl. pt. 1, *State ex rel. State Line Sparkler of WV, Ltd. v. Teach*, 187 W. Va. 271, 418 S.E.2d 585 (1992) (cleaned up). Although county commissions have limited powers, when they do have a power, the commissions are “vested with a wide discretion” in its execution. Syl. pt. 1, *Cnty. Comm’n of Greenbrier Cnty. v. Cummings*, 228 W. Va. 464, 720 S.E.2d 587 (2011) (cleaned up). Thus, where a county commission has broad express powers, it enjoys substantial implied authority as well. *See, e.g., State ex rel. Farley v. Spaulding*, 203 W. Va. 275, 283, 507 S.E.2d 376, 384 (1998) (finding implied authority to employ security personnel at a statutorily required judicial facility).

Article IX, Section 11 of the West Virginia Constitution provides that county commissions “shall ... have the superintendence and administration of the internal police and fiscal affairs of their counties.” W. VA. CONST. art. IX, §11. West Virginia Code § 7-1-3 mirrors that language. W. VA. CODE § 7-1-3. And West Virginia Code § 7-1-5 provides that county commissions must “supervise the general management of the fiscal affairs and business of each county.” *Id.* § 7-1-5.

As part of this duty, county commissions set the total budget for all county operations and must maintain balanced budgets. *Id.* § 7-7-7(c) (granting commission authority to set total budget); *id.* § 11-8-26 (prohibiting deficit spending). Altogether, these constitutional and statutory provisions establish that county commissions have the express power—and the obligation—to oversee counties’ financial affairs. *See State Rd. Comm’n v. Kanawha Cnty. Ct.*, 112 W. Va. 98 (1932) (holding that “superintendence” over fiscal affairs means “oversight,” not absolute control).

That oversight authority carries the implied power to ask for financial records from VFDs that receive county money on a voluntary basis. County commissions fund VFDs through levies, W. VA. CODE § 7-1-3d(a)(1), and can “render financial aid to any one or more public fire protection facilities in operation in the county for the general benefit of the public in the prevention of fires,” *Id.* § 7-1-3d(b). So, if a VFD receives county funds, its finances and operations are part of the fiscal affairs of the county. And though county commissions lack the power to *audit* VFDs, *see* Mineral County Letter, 2025 WL 2655054, at *4, a simple inquiry is “reasonably and necessarily implied” in a county commission’s express power to oversee the county’s finances, *syl. pt. 4, State ex rel. W. Va. Parkways Auth. v. Barr*, 228 W. Va. 27, 716 S.E.2d 689 (2011) (cleaned up). Good fiscal stewardship requires a watchful eye, and county commissions cannot fulfill their constitutional charge without at least the ability to ask VFDs—and other publicly funded entities—how public funds are spent.

The Commission may request records, but it may not condition levy distributions, threaten adverse action, or represent the request as mandatory absent statutory authority (consistent with the Mineral County Letter).

III. VFDs, Ordinarily, Are “Public Bodies” Subject to FOIA.

Finally, in most cases, VFDs are “public bod[ies]” subject to FOIA’s demands. W. VA. CODE § 29B-1-2(4).

West Virginia’s Freedom of Information Act gives the public extensive rights to inspect public records. Unless a specifically enumerated exception authorizes non-disclosure, “[e]very person has a right to inspect or copy any public record of a public body in this state.” W. VA. CODE § 29B-1-3. The term “public body” encompasses, *inter alia*, “any board, department, commission council or agency” of a local government. *Id.* § 29B-1-2(4). It also extends to include “any other body which is created by state or local authority or which is primarily funded by the state or local authority.” *Id.* That definition is to be liberally construed. *Syl. pt. 5, Queen v. W. Va. Univ. Hosps., Inc.*, 179 W. Va. 95, 365 S.E.2d 375 (1987). And we must reject any reading grounded in “stilted formalism.” *Id.* at 102, 365 S.E.2d at 382.

One category of VFDs fits neatly into the definition of “public body”: those that governments establish. Municipalities “have plenary power and authority to provide for the prevention and extinguishment of fires and, for this purpose, it may, among other things, ... provide for the organization, equipment, and government of volunteer fire companies.” W. VA. CODE § 8-15-1. And under West Virginia Code § 8-15-3, municipalities “may contract to render services in the prevention and extinguishment of fires upon property located within the state.” Too, county commissions may “[f]orm county fire prevention units, and supply equipment therefor in

the county.” *id.* § 7-1-3d(a)(2). In other words, local governments can set up their own VFDs. In that case, the VFD is “created by” a “local authority,” so it is a “public body” subject to FOIA. W. VA. CODE § 29B-1-2(4).

In some cases, though, private citizens can set up their own VFDs. Under West Virginia Code § 8-15-4, a group of twenty or more residents of a municipality without a paid fire department can form a VFD by filing a written statement of formation with the county clerk. W. VA. CODE § 8-15-4. Once recorded, the company’s members elect officers and adopt rules consistent with state law and local ordinances. *Id.* Additionally, under West Virginia Code § 8-15-7, “interested persons” may incorporate a VFD as a nonstock, nonprofit corporation under the State’s general corporation laws.

These citizen-formed VFDs, in most cases, will also qualify as “public bodies” because they are “created by state ... authority.” W. VA. CODE § 29B-1-2(4). Two cases dictate that outcome: *Queen v. West Virginia University Hospitals, Inc.*, 179 W. Va. 95, 365 S.E.2d 375 (1987) and *4-H Road Community Association v. West Virginia University Foundation, Inc.*, 182 W. Va. 434, 388 S.E.2d 308 (1989).

In *Queen*, the West Virginia Supreme Court of Appeals held that a hospital was a “public body” because it was formed pursuant to a specific enabling statute. *Queen*, 179 W. Va. at 102, 365 S.E.2d at 382. “[T]he statute was the *sine qua non* leading to the incorporation of [the hospital] and that body was, therefore created by state authority.” *Id.* In light of this, it mattered not that the hospital was created under the “general corporate provisions of West Virginia law.” *Id.* And the Court found it significant that the hospital would “remain accountable as a fiduciary to the people of West Virginia.” *Id.* The hospital was required to report its audited financials to the public and the Legislature annually. *Id.* And its board members were “appointed directly by the Governor and ... subject to confirmation by the State Senate.” *Id.*

In *4-H*, the Court found that a charitable foundation tasked with raising money for a university was *not* a “public body.” *4-H*, 182 W. Va. at 437-38, 388 S.E.2d at 311-12. The situation was different than that in *Queen*. “[T]he Foundation was formed by private citizens pursuant to the general corporate laws of the state” and “[n]o legislative mandate for such an entity predated its incorporation.” *Id.* at 437, 388 S.E.2d at 311. The foundation was “not located on state property; d[id] not utilize state employees; and selection of its Board of Directors, and their duties, [was] governed by the corporation’s by-laws.” *Id.* No “public money, property or employees [were] in any way used for the operation of the [f]oundation,” either. *Id.* at 438, 388 S.E.2d at 312.

Ordinarily, a citizen-formed VFD looks like the hospital in *Queen*; so it qualifies as a “public body” under FOIA. First, citizen-formed VFDs wouldn’t exist but for Sections 8-15-4 and 8-15-7. Those statutes are the “*sine qua non*” of citizen-formed VFDs. *Queen*, 179 W. Va. at 102, 365 S.E.2d at 382. And like the hospital in *Queen*, citizen-formed VFDs bear ongoing obligations that demonstrate their public character. They must comply with state law and local ordinances, W. VA. CODE § 8-15-4, remain subject to municipal authority, *id.* § 8-15-1, and provide a public service, *Shepherdstown*, 172 W. Va. at 635, 309 S.E.2d at 351. In the same way that the State retained authority to appoint hospital board members, municipalities retain power to appoint and prescribe the duties of “commanding officers” of VFDs. W. VA. CODE § 8-15-1; *Mabscott*

Volunteer Fire Dep't v. Houck, 184 W. Va. 37, 39 n.5, 399 S.E.2d 180, 182 n.5 (1990). Too, Section 8-15-7a subjects VFDs to regular financial audits—the same kind of accountability to the public that the *Queen* Court found significant. And, of course, VFDs receive significant state funding for equipment, training, and maintenance. JOINT COMM. ON GOV'T AND FIN., W. VA. OFF. OF THE LEGIS. AUDITOR, ANNUAL VOLUNTEER FIRE DEPARTMENT AUDIT REPORT – 2024 1 (Feb. 10, 2025) (“Every year, the State distributes millions of dollars to hundreds of West Virginia volunteer and part volunteer fire departments (VFD) for the purpose of providing funding for firefighting equipment, training, and maintenance.”).

The only case analyzing whether a citizen-formed VFD is a “public body,” *Porter v. Logan County Fire Department Station 2, Inc.*, No. 15-0520, 2016 WL 1735243, at *2-3 (W. Va. Apr. 29, 2016), isn’t applicable and isn’t to the contrary. In *Porter*, the Court declined to classify a citizen-formed VFD as a “public body,” but under a different statute: the Whistle-Blower Law, not FOIA. *Id.* And the result turned on a thin record; the petitioner simply failed to establish that the VFD received sufficient public funding to meet that statute’s 35% threshold. *Id.*

For citizen-formed VFDs, exceptional cases may exist, but those appear rare. Thus, VFDs—no matter how they are formed—almost always will be considered “public bodies” subject to FOIA. W. VA. CODE § 29B-1-2(4). Unless an exemption applies, they must answer FOIA requests for public records promptly upon receipt.

Sincerely,



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