State of West Virginia
Office of the Attorney General

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The Honorable Lucas J. See
Hardy County Prosecuting Attorney
204 Washington Street, Room 104
Moorefield, WV 26836

Dear Prosecutor See:

You have asked for an Opinion of the Attorney General concerning the authority of county governments to adopt sick leave policies for their employees. 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 in your correspondence with the Office of the Attorney General.

The State of West Virginia promulgates a sick leave policy for state employees, but not for public employees generally. W. Va. Code St. R. § 143-1-14.4. Your letter asks whether benefits policies for county employees must be consistent with the State's policies. Specifically, you ask whether a county commission can adopt a medical leave policy that allows county employees to donate sick leave to another employee, even if the State's policy does not include a similar provision.

Your letter raises the following legal question:

Can a county commission adopt benefits policies for its employees—specifically, sick-leave policies—that differ from the policies that apply to state employees?

We conclude that, with limited statutory exceptions, the Legislature has granted counties general authority to adopt employee benefits programs consistent with the needs of the county and their employees, and that there is no requirement for a county sick-leave policy to mirror state policies.

Discussion

A county commission is "a corporation 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 expressly given." Syl. pt. 1, *State ex rel. Cty. Court v. Arthur*, 150 W. Va. 293, 145 S.E.2d 34 (1965). One of the powers that has been "expressly conferred" to county commissions is authority to provide medical benefits for their employees and to adopt implementing policies. Counties have "plenary power and authority" to secure group life and health insurance policies for their employees, for example. W. Va. Code § 7-5-20. And with respect to sick leave policies, county commissions are similarly "authorized to grant county employees annual and sick leave benefits." *Id.* § 7-5-21.

The general grant of authority in Section 7-5-21 is straightforward, and its text does not suggest that the Legislature intended to dictate the details of sick leave policies on the county level. By providing only that county commissions may "grant county employees annual and sick leave," the statute does not require commissions to grant these benefits in any particular form, much less the same form in which the State grants leave to state employees. A court would very likey conclude that this plain-text reading resolves the question: Where "the text, given its plain meaning, answers the interpretative question, the language must prevail and further inquiry is foreclosed." *Hammons v. W. Va. Office of Ins. Comm'r*, 235 W.Va. 577, 584, 775 S.E.2d 458, 465 (2015) (citation omitted).

Two principles of statutory interpretation bolster this reading. *First*, the Supreme Court of Appeals has applied the general principle that statutes are presumed to mean what they say, without more, *see Martin v. Randolph Cty. Bd. of Educ.*, 195 W. Va. 297, 312, 465 S.E.2d 399, 415 (1995) (citation omitted), to the context of delegated statutory powers. Where a grant of authority "contains no indication that its application is limited" or "provision . . . which limits [a body]'s authority to act," courts will presume that "the Legislature did not intend to limit [its] authority." *Yatauro v. Calhoun Cty. Bd. of Educ.*, 2016 WL 5030280, at *4-5 (W. Va. Sept. 16, 2016) (mem. decision) (citation omitted). Applied to the open-ended language of Section 7-5-21, this principle strongly suggests that county commissions have discretion to craft the details of employee sick leave policies.

Second, reading all statutes governing public employee sick leave policies together further supports this reading. *See* Syl. pt. 7, *Miller v. Wood*, 229 W. Va. 545, 729 S.E.2d 867 (2012) ("[S]tatutes which have a common purpose will be regarded in *para materia* to assure recognition and implementation of the legislative intent." (quoting Syl. pt. 5, *Fruehauf Corp. v. Huntington Moving & Storage Co.*, 159 W. Va. 14, 217 S.E.2d 907 (1975)). While Section 7-5-21 refers to policies for "county employees" generally, two statutes contain specific direction for certain subsets of employees. West Virginia Code § 7-14B-19(c) provides that "[c]orrectional officers may accumulate yearly sick leave in accordance with policy to be established by the county commission." Like Section 7-5-21, this grant of authority is broad, and plainly reflects the Legislature's intent that the county commission may set its own policies in this area.

The statute authorizing sick leave for deputy sheriffs is more specific. It provides that "[t]he county commission of each county shall allow the sheriff's deputies sick leave with pay," and that such leave must be "computed" according to a fixed formula. W. Va. Code § 7-14-17b(a). There are two notable distinctions between this statute and the more general sick leave statutes in Sections 7-5-21 and 7-14B-19(c): County commissions are required to provide paid sick leave to deputy sheriffs ("shall allow"), as opposed to having discretion to adopt sick leave policies, and sick leave for deputy sheriffs must be accrued under a statutorily set formula. *Id.* To the extent your request relates to deputy sheriffs, this more specific statute controls. *See* Syl. pt. 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984) (recounting the "general rule of statutory construction [which] requires that a specific statute be given precedence over a general statute relating to the same subject matter"). For all other employees, however, this statute confirms county commissions' broad authority: The fact that the Legislature imposed express constraints on the type of sick leave policies county commissions may adopt for deputy sheriffs underscores that there are no similar *implicit* limits in the more general sick leave statutes. For example, in a case construing the Grandparent Adoption Act, W. Va. Code § 48-10-902, the Supreme Court of Appeals refused to apply an exception to the general rules governing adoption any further than the specific context described in the statute—there, visitation rights for grandparents where a child is adopted by another relative. The court reasoned that the specific statutory language "reveals that our Legislature knew how to make an exception to the severing effect of adoption"—and conversely that the Legislature did not intend for such an exception to apply more broadly. *In re Hunter H.*, 231 W. Va. 118, 123, 744 S.E.2d 228, 233 (2013); *see also Liberty Mut. Ins. Co. v. Morrisey*, 236 W. Va. 615, 625, 760 S.E.2d 863, 873 (2014) ("If [the Legislature] had wanted the statute to apply to salvage/recycled OEM crash parts, [it] could have easily done so—as it did with aftermarket crash parts.").

We therefore conclude that when delegating authority to county commissions to create sick leave policies, the Legislature did not mandate consistency between these policies and those that apply to state employees. With the exception of policies for deputy sheriffs, where Section 7-14-17b(a)'s requirements govern, county commissions are free to design sick leave policies according to their own needs and priorities.

Sincerely,

Patrick Morrisey
Attorney General

Lindsay See
Solicitor General

Thomas T. Lampman
Assistant Attorney General