



State of West Virginia
Office of the Attorney General

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The Honorable Jeffrey R. Roth
Prosecuting Attorney
Office of the Prosecuting Attorney of Grant County
5 Highland Avenue
Petersburg, WV 26847

Dear Prosecutor Roth:

You have asked for an Opinion of the Attorney General regarding whether the Grant County Commission must hold a public hearing in order to remove two members from the Grant Memorial Hospital Board of Trustees. 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 upon the factual assertions set forth in your correspondence with the Attorney General’s Office.

In your letter, you explain that a dispute has arisen over the Grant County Commission’s attempt to dismiss two members of the board of trustees of Grant Memorial Hospital. It is your view that West Virginia Code § 7-3-15 prohibits the Commission from removing the board members without a public hearing. According to your letter, the County Commission disagrees, relying on the West Virginia Supreme Court of Appeals’ decision in *Williams v. Brown*, 190 W. Va. 202, 437 S.E.2d 775 (1993), which cites *Barbor v. County Court*, 85 W. Va. 359, 101 S.E. 722 (1920).

Your letter raises the following specific legal question:

Is a county commission required to hold a public hearing in order to remove members from the board of trustees of a county public hospital?

The relevant statutory provision is West Virginia Code § 7-3-15. In pertinent part, the provision reads:

The administration and management of any county public hospital, clinic, long-term care facility or other related facility acquired, equipped, furnished, improved or extended under section fourteen of this article shall be vested in a board of

trustees, consisting of not less than five members appointed by the county court. Prior to the issuance of any bonds under the provisions of section fourteen of this article, the county court shall appoint two of such trustees for a term of two years, two trustees for a term of four years, and one trustee for a term of six years from the first day of the month during which appointed. Upon the expiration of such initial appointments, the term of each new appointee shall be six years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. . . . Any trustee may be removed by the county commission for incompetency, neglect of duty or malfeasance in office after an opportunity to be heard at a public hearing before the county commission. . . .

Such board of trustees shall provide for the employment of and shall fix the compensation for and remove at pleasure all professional, technical and other employees, skilled or unskilled, as it may deem necessary for the operation and maintenance of the hospital, clinic, long-term care facility or other related facility

W. Va. Code § 7-3-15.¹ Grant Memorial Hospital is a public hospital owned by the Grant County Commission as authorized by West Virginia Code § 7-3-14.

The statute plainly states that a county commission has authority to remove members of the hospital board of trustees only for “incompetency, neglect of duty or malfeasance” and *only after a public hearing*. After the expiration of the initial appointments to the board, members of the board of trustees of a public hospital are appointed by the county commission to serve defined terms of six years. W. Va. Code § 7-3-15. The statute then states that “[a]ny trustee may be removed by the county commission for incompetency, neglect of duty or malfeasance in office after an opportunity to be heard at a public hearing before the county commission.” W. Va. Code § 7-3-15. In notable contrast, the statute grants the board of trustees the power to “remove at pleasure” all employees of the facility that is run by the board. Though the West Virginia Supreme Court of Appeals has not interpreted these removal provisions, we think the statutory text is clear as to the limits on the county commission’s mid-term removal power over members of a county hospital board of trustees.

The cases relied upon by the County Commission—*Williams v. Brown*, 190 W. Va. 202, 437 S.E.2d 775 (1993), and *Barbor v. Cnty. Court of Mercer Cnty.*, 85 W. Va. 359, 101 S.E. 721 (1920)—are not to the contrary. While those cases provided that the appointees could be removed at the pleasure of the appointing official (and thus without a public hearing), the statutes at issue in those cases were different in critical respects. As highlighted in each opinion, those cases both turned on the fact that the relevant statutes explicitly stated that appointees served “at the pleasure” of the appointing official and contained no fixed term of service.

¹ See Const. art. IX, §9 (“The office of the county court . . . is hereby continued in all respects as heretofore constituted, but from and after the effective date of this amendment shall be designated as the county commission . . .”).

Hon. Jeffrey R. Roth

June 8, 2016


Page 3

In *Williams*, the statute provided that assistant attorneys general “shall serve at the pleasure of the attorney general.” Syl. Pt. 4, *Williams v. Brown*, 190 W. Va. 202, 437 S.E.2d 775 (citing W. Va. Code § 5-3-3 (1961)). The court reasoned that the Legislature’s use of that phrase “indicate[d] the intent . . . to give the Attorney General unfettered control over the hiring and firing of assistant attorneys general.” *Id.* at 205, 437 S.E.2d at 778. It explained further: “[A]n at-will removal power is implied when the employer has the power of appointment and the office carries no fixed term.” *Id.* at 205, 437 S.E.2d at 778 (citing *State ex rel. Archer v. County Court*, 150 W. Va. 260, 144 S.E.2d 791 (1965)).

Similarly, in *Barbor*, the statute did not specify a term of office for the manager of the county poor farm, but instead stated that the individual served at the county commission’s pleasure. 85 W. Va. at 359, 101 S.E. at 722. Thus, the court concluded that the individual could be terminated at will. It summarized: “[w]here a statute conferring the power to appoint fixes no definite term of office, but provides that tenure shall be at the pleasure of the appointing body, the implied power to remove such appointee may be exercised at its discretion.” Syl. Pt. 4, *Barbor v. Cnty. Court of Mercer Cnty.*, 85 W. Va. 359, 101 S.E. 721.

The statute here does not resemble the statutes in those cases. In this case, the statute specifies a definite term of office for members of the board of trustees. It also does not state that a member can be terminated at will, but rather expressly sets forth the scope of the county commission’s power to remove a member.²

Sincerely,



Patrick Morrissey
Attorney General

Elbert Lin
Solicitor General

Erica N. Peterson
Assistant Attorney General

² In a recent Opinion, we confronted a third factual circumstance: where the relevant statute authorized the county commission to appoint ambulance authority board members for a fixed term but was silent as to the commission’s authority to remove members. W. Va. Att’y Gen. Op., 2015 WL 7431400 (Nov. 12, 2015). We concluded that the county commission itself lacked authority to remove the board members mid-term, but we did note that the county commission could still follow the procedure set forth in West Virginia Code § 6-6-7 to file charges with a circuit court for the removal of “[a]ny person holding any county, school district or municipal office,” in the event of “official misconduct, malfeasance in office, incompetence, neglect of duty or gross immorality or for any of the causes or on any of the grounds provided by any other statute.” W. Va. Code § 6-6-7(a).