

# WEST VIRGINIA REGISTER

Published by the Office of the Secretary of State

Volume XXXIV

Issue 15

April 14, 2017

A Weekly Publication

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**This week's publication includes documents submitted by the following agencies:**

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Medicine, WV Bd. of

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**NEW PROPOSED RULES FILED FOR PUBLIC COMMENT THIS WEEK**

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Education (126-15)	Regulations and English Language Proficiency Standards for English Learners (Policy 2417) Legislative Exempt	§29A-3B-1 et seq.	Written Comments Only May 15, 2017, 4:00 pm Robert Crawford, Assistant Director WVDE Office of Federal Programs Capitol Building 6, Room 330 1900 Kanawha Boulevard East Charleston, WV 25305-0330
Education (126-16)	Regulations for the Education of Students with Exceptionalities (2419) Legislative Exempt	§29A-3B-1 et seq.	Written Comments Only June 11, 2017, 4:00 pm Pat Homberg, Executive Director WVDE Office of Special Education Capitol Building 6, Room 717 1900 Kanawha Boulevard East Charleston, WV 25305-0330

**NO NEW EMERGENCY RULES WERE FILED THIS WEEK**

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>EFFECTIVE DATE</u>	<u>DATE NOTICE FOR HEARING</u>



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GUIDE FOR USING THE RULE MONITOR IN THE STATE REGISTER

Column	1. Agency Name, (Title and Series Number)
Column	2. Rule Title, Price and Type
Column	3. Date Notice of Public Hearing or Comment Period Filed
Column	4. Date of Public Hearing or Last Date Comments Will Be Received
Column	5. Date Emergency Rule Filed, Emergency Amendments Filed, Emergency Rule Decision (ERD) Number & Date ERD Filed (Effective Date of Emergency Rule)
Column	6. Date Agency Approved Legislative Rules Filed.
Column	7. Date Review by the Legislative Rule-Making Review Committee & Action Taken <b>**Please Note**</b> The Board of Education, Board of Trustees & Board of Directors File Their Rules With the Educational Over-Sight Committee
Column	8. Legislative Action
Column	9. Date Agency Final Files Legislative, Procedural or Interpretive Rules. This is the Final Step for Procedural & Interpretive Rules
Column	10. Date Rule is Effective

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- Emergency rules will not have a "Notice" date until the agency files one, but the rule will appear in Columns 1, 2 & 5. An Agency must file for either a public hearing or public comment period either before filing as an emergency or no more than 30 days after filing the rule as an emergency
- If more than one date appears in a column, it means the agency has repeated that step (ex. - holding an additional public hearing)

## CROSS REFERENCE OF RULE MONITOR TITLE NUMBERS AND AGENCIES

<u>TITLE NUMBER</u>	<u>NAME OF AGENCY</u>
TITLE 3	BARBERS AND COSMETOLOGISTS
TITLE 7	PROFESSIONAL ENGINEERS
TITLE 10	LICENSED PRACTICAL NURSES
TITLE 11	MEDICINE
TITLE 13	OCCUPATIONAL THERAPY
TITLE 14	OPTOMETRY
TITLE 15	PHARMACY
TITLE 16	PHYSICAL THERAPY
TITLE 17	PSYCHOLOGISTS
TITLE 20	SANITARIANS
TITLE 24	OSTEOPATHY
TITLE 25	SOCIAL WORK EXAMINERS
TITLE 26	VETERINARY MEDICINE
TITLE 27	COUNSELING
TITLE 29	SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY
TITLE 33	OFFICE OF WASTE MANAGEMENT (FORMERLY PART OF TITLE 47)
TITLE 35	OFFICE OF OIL AND GAS
TITLE 36	COAL MINE HEALTH & SAFETY
TITLE 38	MINING & RECLAMATION
TITLE 42	LABOR
TITLE 45	OFFICE OF AIR QUALITY
TITLE 47	OFFICE OF WATER RESOURCES
TITLE 48	MINES TRAINING EDUCATION & CERTIFICATION
TITLE 56	MINERS' HEALTH, SAFETY AND TRAINING
TITLE 58	NATURAL RESOURCES
TITLE 60	ENVIRONMENTAL PROTECTION, SECRETARY'S OFFICE
TITLE 61	AGRICULTURE
TITLE 63	CONSERVATION AGENCY
TITLE 64	HEALTH
TITLE 65	HEALTH CARE AUTHORITY
TITLE 69	HEALTH & HUMAN RESOURCES
TITLE 76	SENIOR SERVICES
TITLE 78	HUMAN SERVICES
TITLE 81	STATE POLICE
TITLE 82	CULTURE AND HISTORY
TITLE 85	WORKERS COMPENSATION BY THE INSURANCE COMMISSION
TITLE 86	VETERANS AFFAIRS
TITLE 87	FIRE COMMISSION
TITLE 90	CORRECTIONS
TITLE 91	MOTOR VEHICLES
TITLE 94	REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY
TITLE 96	WORKFORCE WEST VIRGINIA
TITLE 110	TAX DEPARTMENT
TITLE 112	TREASURER
TITLE 113	HEALTH INSURANCE PLAN
TITLE 114	INSURANCE
TITLE 126	EDUCATION
TITLE 127	SECONDARY SCHOOLS ACTIVITIES COMM.
TITLE 133	HIGHER EDUCATION POLICY COMMISSION
TITLE 135	COMMUNITY & TECHNICAL COLLEGE EDUCATION
TITLE 143	PERSONNEL
TITLE 144	TOURISM
TITLE 146	STATE ELECTION COMMISSION
TITLE 148	ADMINISTRATION
TITLE 149	CRIME, DELINQUENCY AND CORRECTION
TITLE 150	PUBLIC SERVICE COMMISSION
TITLE 153	SECRETARY OF STATE
TITLE 157	DIVISION OF HIGHWAYS
TITLE 158	ETHICS COMMISSION
TITLE 162	CONSOLIDATED PUBLIC RETIREMENT BOARD
TITLE 172	STATE RAIL AUTHORITY
TITLE 175	ALCOHOL BEVERAGE CONTROL COMMISSION
TITLE 176	ALCOHOL BEVERAGE CONTROL COMMISSION - BEER
TITLE 177	ATHLETIC COMMISSION
TITLE 178	RACING COMMISSION
TITLE 179	LOTTERY
TITLE 184	PARKWAYS ECONOMIC DEV. & TOURISM AUTHORITY
TITLE 190	REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD
TITLE 191	FAMILY PROTECTION SERVICES BOARD
TITLE 199	EXPLOSIVES & BLASTING
TITLE 204	HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY
TITLE 205	OUTDOOR HERITAGE CONSERVATION FUND
TITLE 207	COALFIELD COMMUNITY DEVELOPMENT
TITLE 210	GOHELP

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Agriculture (61-1)	Animal Disease Control Legislative	7/18/2016	8/17/2016		8/23/2016	Modified & Approved 9/21/2016 Filed 9/23/2016	SB 82 HB 2223		
Agriculture (61-30)	Dangerous Wild Animal (repeal) Legislative	7/19/2016	8/19/2016		8/23/2016	Approved 9/21/2016	SB 83 HB 2218		
Agriculture (61-31)	Livestock Care Standards-Repeal Legislative	7/19/2016	8/19/2016		8/23/2016	Approved 9/21/2016	SB 84 HB 2219		
Agriculture (61-34)	Captive Cervid Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 9/23/2016	SB 85 HB 2234		
Air Quality (45-1)	Alternative Emission Limitations During Startup, Shutdown and Maintenance Operations Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 105 HB 2221 Bundled SB 113		
Air Quality (45-8)	Ambient Air Quality Standards Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 111 HB 2222 Bundled SB 113		
Air Quality (45-13)	Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements..... Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 106 HB 2223 Bundled SB 113		
Air Quality (45-14)	Permits for Construction and Major Modifications of Major Stationary Sources for the Prevention of Significant Deterioration of Air Quality Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 107 HB 2224 Bundled SB 113		
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 108 HB 2225 Bundled SB 113		
Air Quality (45-25)	Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 109 HB 2226 Bundled SB 113		

**RULE MONITOR**

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	7/1/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 110 HB 2227 Bundled SB 113		
Architects (2-1)	Registration of Architect Legislative	7/7/2016	8/8/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/5/2016	SB 86 HB 2235 Bundled HB 2219		
Athletic Commission (177-1)	Administrative Rules of the WV State Athletic Commission Legislative	7/13/2016	8/12/2016		8/24/2016	Modified & Approved 12/6/2016 Filed 12/20/2016	SB 87 HB 2236 Bundled HB 2219		
Athletic Commission (177-2)	Regulation of Mixed Martial Arts Legislative	7/13/2016	8/12/2016		8/24/2016	Modified & Approved 12/6/2016 Filed 12/20/2016	SB 88 SB 2237 Bundled HB 2219		
Auditor (155-1)	Standards for Requisitions for Payment Issued by State Officers on the Auditor Legislative	7/27/2016	8/26/2016		8/26/2016	Modified w/certain amendments & Approved 9/21/2016 Filed 9/21/2016	SB 89 HB 2297 Bundled HB 2219		
Auditor (155-8)	Procedure for Local Levying Bodies to Apply for Permission to Extend Time to Meet as Levying Body Legislative	7/26/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 9/21/2016	SB 90 HB 2238 Bundled HB 2219		
Barbers and Cosmetologists (3-2)	Qualifications, Training, Examination and Certification of Instructors in Barbering & Cosmetology Legislative	6/23/2016	7/25/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 95 HB 2239 Bundled HB 2219		
Barbers and Cosmetologists (3-3)	Licensing Schools to Barbering, Cosmetology, Nail Technology and Aesthetics Legislative	6/29/2016	8/1/2016		8/19/2016	Approved 1/10/2017	SB 96 HB 2220 Bundled HB 2219		
Barbers and Cosmetologists (3-4)	Operational Standards for Schools of Barbering, Cosmetology, Hair Styling, Nail Technology and Aesthetics Legislative	6/29/2016	8/1/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/26/2017	SB 91 SB 2240 Bundled HB 2219		

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Barbers and Cosmetologists (3-5)	Operation of Barber, Beauty, Nail and Aesthetic Shops/Salons, and Schools of Barbering and Beauty Culture Legislative	7/13/2016	8/12/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/19/2017	SB 92 HB 2241 Bundled HB 2219		
Barbers and Cosmetologists (3-6)	Schedule of Fees Legislative	7/6/2016	8/8/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/19/2017	SB 98 HB 2242 Bundled HB 2219		
Barbers and Cosmetologists (3-11)	Continuing Education Legislative	7/5/2016	8/8/2016		8/24/2016	Modified w/Certain Amendments & Approved 1/10/2017 Filed 1/19/2017	SB 93 HB 2298 Bundled HB 2219		
Barbers and Cosmetologists (3-13)	Barber Apprenticeship Legislative	7/5/2016	8/8/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/19/2017	SB 94 HB 2243 Bundled HB 2219		
Barbers and Cosmetologists (3-14)	Waxing Specialist Legislative	7/6/2016	8/8/2016		8/24/2016	Recommendations Rejection 1/10/2017	SB 91 HB 2229 Bundled HB 2219		
Comm. & Tech. College Education (135-35)	Correspondence, Business, Occupational and Trade Schools Legislative	12/12/2016	1/13/2017				HB 2706		
Comm. & Tech. College Education (135-52)	Annual Reauthorization of Degree-Granting Institutions Legislative	12/12/2016	1/13/2017				HB 2706		
Counseling (27-2)	Licensed Professional Counselor Fees Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 100 HB 2244 Bundled HB 2219		
Counseling (27-3)	Licensed Professional Counselor License Renewal and Continuing Professional Education Requirements Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 101 HB 2245 Bundled HB 2219		



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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Counseling (27-10)	Marriage and Family Therapist Fees Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 102 HB 2246 Bundled HB 2219		
Counseling (27-10)	Marriage and Family Therapist License Renewal and Continuing Professional Education Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 99 HB 2247 Bundled HB 2219		
Crime, Delinquency and Correction (149-2)	Law Enforcement Training and Certification Standards Legislative	7/22/2016	8/24/2016		8/26/2016	Modified & Approved 12/7/2016 Filed 12/20/2016	SB 118 HB 2252 Bundled SB 116		
Dangerous Wild Animal Board (74-1)	Dangerous Wild Animals Legislative	1/11/2016	2/10/2016		2/11/2016		SB 103 HB 2248 Bundled HB 2219		
Dentistry (5-1)	Rule for the WV Bd of Dentistry Legislative	6/16/2016	7/18/2016		7/26/2016	Modified & Approved 8/22/2016 Filed 9/2/2016	SB 104 HB 2249 Bundled HB 2219		
Education (126-14)	WV Measures of Academic Progress (2340) Legislative Exempt	1/11/2017	2/10/2017					2/16/2017	3/20/2017
Education (126-15)	Regulations and English Language Proficiency Standards for English Learners (2417) Legislative Exempt	4/13/2017	5/15/2017						
Education (126-16)	Regulations for the Education of Students with Exceptionalities (2419) Legislative Exempt	4/13/2017	6/11/2017						
Education (126-44N)	21 <sup>st</sup> Century Learning Skills & Tech. Tools Content Standards & Objectives for WV Schools (2520.14) Legislative Exempt	1/11/2017	2/10/2017					4/13/2017	7/1/2017
Education (126-44U)	WV College and Career Readiness Dispositions and Standards for Student Success for Grades K-12 (2520.19) Legislative Exempt	1/11/2017	2/10/2017					3/9/2017	7/1/2017

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Education (126-81)	Attendance (4110) Legislative Exempt	1/11/2017	2/10/2017					3/9/2017	4/10/2017
Education (126-126)	Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000) Legislative Exempt	3/9/2017	4/10/2017						
Education (126-161)	Alternative Certification Programs for the Education of Teachers (5901) Legislative Exempt	1/11/2017	2/10/2017					3/9/2017	4/10/2017
Environmental Protection-Secretary's Office (60-3)	Voluntary Remediation and Redevelopment Rule Legislative	6/27/2016	7/28/2016		8/25/2016	Approved 12/6/2016	SB 112 HB 2228 Bundled SB 113		
Ethics Commission (158-6)	Private Gain Legislative	5/17/2016	6/16/2016		8/23/2016	Modified & Approved 12/7/2016 Filed 12/19/2016	SB 114 HB 2250 Bundled SB 151		
Fire Marshal (103-4)	Regulation of Fireworks and Related Explosive Materials Legislative	5/12/2016	6/13/2016	5/12/2016 Expired 8/10/2016	8/26/2016	Modified & Approved 12/7/2016 Filed 12/21/2016	SB 115 HB 2251 Bundled SB 116		
Health (64-57)	Clinical Laboratory Technician & Technologists Licensure and Certification Legislative	7/8/2016	8/7/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/6/2016	SB 119 HB 2254 Bundled SB 125		
Health (64-92)	Clandestine Drug Laboratory Remediation Legislative	7/8/2016	8/7/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/11/2016	SB 120 HB 2255 Bundled SB 125		
Health (64-103)	Expedited Partner Therapy Legislative	7/8/2016	8/7/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/6/2016	SB 118 HB 2256 Bundled SB 125		
Health and Human Resources (69-11)	Medication-Assisted Treatment-Opioid Treatment Programs Legislative	7/8/2016	8/7/2016	8/31/2016 Approved 9/14/2016	8/26/2016	Modified & Approved 11/10/2017 Filed 1/25/2017	SB 121 HB 2257 Bundled SB 125		

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health and Human Resources (69-12)	Medication-Assisted Treatment-Office-Based Medication Assisted Treatment Legislative	7/8/2016	8/7/2016	8/31/2016	8/26/2016	Modified & Approved	SB 122 HB 2258 Bundled SB 125		
				9/14/2016		Approved			
				1/26/2017		Filed			
				3/7/2017		Approved			
Health Care Authority (65-29)	Exemption From Certificate of Need Legislative	6/8/2016	7/11/2016	6/8/2016	8/22/2016	Modified & Approved	SB 123 HB 2259 Bundled SB 125		
				6/10/2016		Approved			
				8/22/2016		Filed			
				9/14/2016		Approved			
				12/19/2016		Amendment			
				12/29/2016		Approved			
				1/6/2017		Amendment			
				1/6/2017		Approved			
				1/6/2017		Approved			
				1/6/2017		Approved			
Health Care Authority (65-30)	Rural Health Systems Grant Program Legislative	6/9/2016	7/11/2016	6/7/2016	8/24/2016	Modified & Approved	SB 124 HB 2260 Bundled SB 125		
				6/17/2016		Approved			
				8/24/2016		Filed			
				9/14/2016		Approved			
				12/16/2016		Amendment			
				12/16/2016		Approved			
				12/29/2016		Approved			
Health Care Authority (65-31)	Hospital Assistance Grant Program Legislative	6/7/2016	7/11/2016	6/7/2016	8/24/2016	Modified & Approved	SB 125 HB 2261 Bundled SB 125		
				6/10/2016		Approved			
				8/24/2016		Filed			
				9/14/2016		Approved			
				12/16/2016		Amendment			
				12/29/2016		Approved			

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health Care Authority (65-32)	Certificate of Need Rule Legislative	6/8/2016	7/11/2016	6/8/2016 Approved 6/10/2016 Amendment 8/23/2016 Approved 9/29/2016 Amendment 12/19/2016 Approved 12/29/2016	8/23/2016	Modified & Approved 12/6/2016 Filed 12/19/2016	SB 126 HB 2262 Bundled SB 125		
Higher Ed. Policy Commission (133-7)	WV Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program Legislative	11/18/2016	12/18/2016		12/20/2016		HB 2706		
Higher Ed. Policy Commission (133-25)	Residency Classification for Admission and Fee Purposes Procedural	4/4/2017	5/4/2017						
Higher Ed. Policy Commission (133-42)	WV Higher Education Grant Program Legislative	11/18/2016	12/18/2016		12/20/2016		HB 2706		
Higher Ed. Policy Commission (133-48)	Research Trust Fund Legislative	11/18/2016	12/18/2016		12/21/2016		HB 2706		
Higher Ed. Policy Commission (133-52)	Annual Reauthorization of Degree-Granting Institutions Legislative	11/18/2016	12/18/2016		12/21/2016		HB 2706		
Insurance Commission (114-98)	Adoption of Valuation Manual Legislative	7/13/2016	8/15/2016	8/22/2016 Approved 8/24/2016	8/22/2016	Approved 9/21/2016	SB 127 HB 2230 Bundled SB 127		
Justice and Community Services (224-1)	William R. Laird IV Second Chance Driver's License Program Legislative	2/17/2017	3/20/2017	2/17/2017 Approved 3/7/2017					
Lottery (179-5)	Limited Video Lottery Legislative	7/18/2016	8/17/2016		8/22/2016	Modified & Approved 12/6/2016 Filed 12/7/2016	SB 128 HB 2263 Bundled SB 127		
Medicine (11-1A)	Licensing and Disciplinary Procedures: Physicians, Podiatrists Legislative	6/1/2016	6/30/2016		7/12/2016	Modified & Approved 8/22/2016 Filed 9/1/2016	SB 129 HB 2264 Bundled HB 2219		

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Medicine (11-1B)	Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative	5/31/2016	6/30/2016		7/12/2016	Modified & Approved 8/22/2016 Filed 9/1/2016	SB 130 HB 2265 Bundled HB 2219		
Medicine (11-5)	Dispensing of Legend Drugs by Practitioners Legislative	7/12/2016	8/11/2016		8/24/2016	Modified & Approved 9/21/2016 Filed 9/26/2016	SB 131 HB 2266 Bundled HB 2219		
Miners' Health Safety and Training (56-22)	Certification, Recertification and Training of EMT-Miners and the Certification of EMT-M Instructors Legislative	4/29/2016	6/3/2016	4/29/2016 Amendment 6/7/2016 Approved 6/9/2016	7/6/2016	Modified & Approved 8/25/2016 Filed 9/6/2016	SB 132 HB 2267 Bundled SB 134		
Natural Resources (58-23)	Revocation of Hunting and Fishing Licenses Legislative	7/26/2016	8/26/2016		8/29/2016	Modified & Approved 12/6/2016 Filed 1/3/2017	SB 133 HB 2268 Bundled SB 134		
Natural Resources (58-24)	Point System for the Revocation of Hunting - Repeal Legislative	7/26/2016	8/26/2016		8/29/2016	Approved 12/6/2016	SB 134 HB 2231 Bundled SB 134		
Natural Resources (58-58)	Special Waterfowl Hunting Legislative	7/25/2016	8/26/2016		8/26/2016	Modified & Approved 12/6/2016 Filed 1/3/2017	SB 135 HB 2269 Bundled SB 134		
Natural Resources (58-63)	Commercial Sale of Wildlife Legislative	7/25/2016	8/26/2016		8/26/2016	Modified & Approved 12/6/2016 Filed 1/3/2017	SB 136 HB 2270 Bundled SB 134		
Natural Resources (58-64)	Miscellaneous Permits and Licenses Legislative	7/25/2016	8/26/2016		8/26/2016	Modified & Approved 12/6/2016 Filed 1/3/2017	SB 137 HB 2271 Bundled SB 134		
Optometry (14-10)	Continuing Education Legislative	7/19/2016	8/22/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/3/2016	SB 138 HB 2272 Bundled HB 2219		

**RULE MONITOR**

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Osteopathic Medicine (24-1)	Licensing Procedures for Osteopathic Physicians Legislative	7/22/2016	8/22/2016		8/26/2016	Modified & Approved 9/21/2016	SB 139 HB 2273 Bundled HB 2219		
Osteopathic Medicine (24-2)	Osteopathic Physician Assistants Legislative	7/25/2016	8/25/2016		8/29/2016	Modified & Approved 9/21/2016	SB 140 HB 2274 Bundled HB 2219		
Pharmacy (15-1)	Licensure and Practice of Pharmacy Legislative	7/1/2016	8/4/2016		8/18/2016	Modified & Approved 12/7/2016 Filed 12/19/2016	SB 141 HB 2275 Bundled HB 2219		
Pharmacy (15-6)	Mail-Order and Non-Resident Pharmacies Legislative	7/1/2016	8/4/2016		8/18/2016	Modified & Approved 12/7/2016 Filed 12/19/2016	SB 142 HB 2276 Bundled HB 2219		
Pharmacy (15-7)	Registration of Pharmacy Technicians Legislative	1/18/2016	2/20/2017	1/19/2017 Approved 1/23/2017	2/24/2017		Bundled HB 2219		
Pharmacy (15-8)	Controlled Substances Monitoring Program Legislative	7/1/2016	8/4/2016		8/18/2016	Modified & Approved 12/7/2016 Filed 12/19/2016	SB 143 HB 2277 Bundled HB 2219		
Physical Therapy (16-4)	Fees for Physical Therapist and Physical Therapist Assistant Legislative	3/16/2016	4/18/2016		4/22/2016	Approved 9/1/2016	SB 144 HB 2232 Bundled HB 2219		
Public Service Commission (150-37)	Telephone Conduit Occupancy Legislative	6/7/2016	7/15/2016		8/26/2016	Modified & Approved 12/7/2016 Filed 12/13/2016	SB 145 HB 2278 Bundled HB 2219		
Racing Commission (178-1)	Thoroughbred Racing Legislative	7/13/2016	8/12/2016		8/18/2016	Modified & Approved 9/21/2016 Filed 9/19/2016	SB 146 HB 2279 Bundled SB 127		
Racing Commission (178-5)	Pari-Mutuel Wagering Legislative	7/13/2016	8/12/2016		8/18/2016	Modified & Approved 9/21/2016 Filed 9/19/2016	SB 147 HB 2280 Bundled SB 127		

**RULE MONITOR**

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Registered Professional Nurses (19-3)	Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct Legislative	6/24/2016	7/23/2016	8/12/2016 Effective 9/23/2016	7/29/2016	Modified & Approved 8/22/2016	SB 148 HB 2281 Bundled HB 2219		
Registered Professional Nurses (19-8)	Limited Prescriptive Authority for Nurses in Advanced Practice Legislative	6/15/2016	7/22/2016	8/12/2016 Effective 9/23/2016	8/2/2016	Modified & Approved 8/22/2016	SB 149 HB 2282 Bundled HB 2219		
Risk and Insurance Management (115-1)	Mine Subsidence Insurance Legislative	6/13/2016	7/14/2016	6/13/2016 ERD by 7/25/2016 Withdrawn 7/1/2016 9/15/2016 Approved 9/29/2016	8/22/2016	Modified & Approved 12/6/2016 Filed 12/12/2016	SB 150 HB 2283 Bundled SB 151		
Risk and Insurance Management (115-7)	Patient Injury Compensation Fund Legislative	6/7/2016	7/7/2016	6/6/2016 Approved 7/1/2016	8/22/2016	Modified & Approved 12/6/2016	SB 151 HB 2284 Bundled SB 151		
Sanitarians (20-4)	Practice of Public Health Sanitation Legislative	7/1/2016	8/1/2016		8/11/2016	Modified & Approved 9/21/2016 Filed 10/3/2016	SB 152 HB 2285 Bundled HB 2219		
School Building Authority of WV (164-1)	School Building Authority Policy and Procedures Handbook Procedural	12/22/2016	1/23/2017						
Secretary of State (153-3)	Voter Registration at the Div. of Motor Vehicles Legislative	7/22/2016	8/22/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/17/2016	SB 153 HB 2286 Bundled HB 2219		
Secretary of State (153-5)	Voter Registration List Maintenance by the Secretary of State Legislative	7/22/2016	8/22/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/17/2017	SB 154 HB 2287 Bundled HB 2219		
Senior Services (76-3)	WV State Plan for Aging Programs Interpretive	7/7/2016	8/8/2016						
Social Work Examiners (25-5)	Continuing Education for Social Workers and Providers Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 9/21/2016	SB 155 HB 2288 Bundled HB 2219		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Speech-Language Pathology & Audiology (29-1)	Licensure of Speech-Pathology and Audiology Legislative	7/15/2016	8/18/2016		8/22/2016	Modified & Approved 1/10/2017 Filed 1/23/2017	SB 156 HB 2289 Bundled HB 2219		
Treasurer (112-4)	Procedures for Deposit of Monies with the State Treasurer's Office by State Agencies Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 159 HB 2290 Bundled HB 2219		
Treasurer (112-6)	Selection of State Depositories for Disbursement Accounts through Competitive Bidding Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 160 HB 2291 Bundled HB 2219		
Treasurer (112-7)	Selection of State Depositories for Receipt Accounts Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 161 HB 2292 Bundled HB 2219		
Treasurer (112-8)	Procedures for Processing Payments from the State Treasury Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 162 HB 2293 Bundled HB 2219		
Treasurer (112-12)	Procedure for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 157 HB 2294 Bundled HB 2219		
Treasurer (112-13)	Procedures for Providing Services to Political Subdivisions Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 158 HB 2295 Bundled HB 2219		
Veterinary Medicine (26-4)	Standards of Practice Legislative	3/10/2016	4/11/2016		6/15/2016	Modified & Approved 9/21/2016 Filed 9/28/2016	SB 163 HB 2296 Bundled HB 2219		
Waste Mgmt., Div. of Water & Waste Mgmt (33-01A)	Disposal of Completion Waste Interpretive	3/16/2017	4/16/2017						



RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC- ACTION	LEGIS	FINAL FILE	EFFECTIVE
Waste Mgmt., Div. of Water & Waste Mgmt (33-41)	Awarding of Matching Grants for Local Litter Control Program Legislative	6/29/2016	8/11/2016		8/25/2016	Approved 12/6/2016	SB 113 HB 2229 Bundled SB 113		



**WEST VIRGINIA  
SECRETARY OF STATE  
MAC WARNER**

FILED

4/13/2017 1:39:16 PM

OFFICE OF THE  
WEST VIRGINIA SECRETARY OF STATE

**LEGISLATIVE**

FILED

4/13/2017 1:43:57 PM

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WEST VIRGINIA SECRETARY OF STATE

**WEST VIRGINIA  
SECRETARY OF STATE  
MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**ADMINISTRATIVE LAW DIVISION**

**ADMINISTRATIVE LAW DIVISION**

FORM 1 - NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE  
(Page 1)

FORM 1 - NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE  
(Page 1)

AGENCY Education  
RULE TYPE Legislative Exempt AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 126-  
RULE NAME Regulations and English Language Proficiency Standards for English Learners (Policy 015  
2417)

AGENCY Education  
RULE TYPE Legislative Exempt AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 126-  
RULE NAME Regulations for the Education of Students with Exceptionalities

CITE AUTHORITY W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d  
839 (1988)

CITE AUTHORITY W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d  
839 (1988)

COMMENTS LIMITED TO  
Written

COMMENTS LIMITED TO  
Written

DATE OF PUBLIC HEARING

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS  
Monday, May 15, 2017 4:00 PM

DATE WRITTEN COMMENT PERIOD ENDS  
Sunday, June 11, 2017 4:00 PM

WRITTEN COMMENTS MAY BE MAILED TO  
Robert Crawford, Assistant Director  
WVDE Office of Federal Programs  
Capitol Building 6, Room 330  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330

WRITTEN COMMENTS MAY BE MAILED TO  
Pat Homborg, Executive Director  
WVDE Office of Special Education  
Capitol Building 6, Room 717  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes  
Mary C Tuckwiller -- By my signature, I certify that I am the person authorized to file legislative rules, in  
accordance with West Virginia Code §29A-3-11 and §39A-3-2.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes  
Jill M Newman -- By my signature, I certify that I am the person authorized to file legislative rules, in  
accordance with West Virginia Code §29A-3-11 and §39A-3-2.



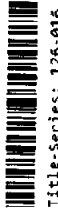
Title-Series: 126-015  
Document: 49279



Title-Series: 126-015  
Rule Id: 16408



Title-Series: 126-015  
Document: 49279



Title-Series: 126-016



Rule Id: 16407



Document: 45278



**WEST VIRGINIA  
SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

FILED

4/13/2017 1:37:35 PM

OFFICE OF THE  
WEST VIRGINIA SECRETARY OF STATE

LEGISLATIVE

FORM 5 - NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY Education  
RULE TYPE Legislative Exempt AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 126-  
RULE NAME West Virginia College- and Career-Readiness Standards for Technology and Computer Science (Policy 2520.14) 044N

CITE AUTHORITY W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)

RULE IS LEGISLATIVE EXEMPT

Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE, THE EFFECTIVE DATE OF THIS RULE IS Saturday, July 01, 2017

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Jill M. Newman -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 126-044N



Rule Id: 10379



Document: 49277

# Orders Report

Docket Number	Agency	Respondent	Date Rendered
	Health Care Authority	Thirty Six Leasing Co., LLC	4/5/2017
	Health Care Authority	Ohio Valley Medical Center, Inc.	4/5/2017
	Medicine, West Virginia Board Of	Nabeel Ghabra, MD	4/11/2017

**WEST VIRGINIA ETHICS COMMISSION ADVISORY OPINIONS**

<b>NO.</b>	<b>OPINION SOUGHT</b>
2017-08	A Director of a State Agency charged with providing health care benefits to public employees asks if his agency may contract with a private company to provide a wellness program that offers financial rewards to public employees.
2017-09	A Cabinet Secretary asks whether his private business interests implicate the West Virginia Governmental Ethics Act.
2017-10	A County Commissioner asks whether his company may sell construction materials and supplies to county contractors to use for their non-county projects.
2017-11	A County Commissioner asks what precautions he must take to ensure that his company does not supply construction materials and supplies for use in county construction projects.
2017-12	A County Commissioner asks various questions about whether there is a conflict of interest for a board member or employee of a Parks and Recreation Commission to be a board member, employee or subcontractor of a Convention and Visitor's Bureau.

**WEST VIRGINIA ETHICS COMMISSION CONTRACT EXEMPTION**

**NO.**

**OPINION SOUGHT**

2017-02

The Putnam Public Service District requests an exemption to continue purchasing replacement parts for its manholes and wet-wells from a business owned by a recently elected county commissioner and to make other purchases from this business in emergency situations.

**WEST VIRGINIA ETHICS COMMISSION PROPERTY EXEMPTIONS OPINIONS**

**NO.**

**OPINION SOUGHT**

2017-01

Jeff S. Sandy, Cabinet Secretary, West Virginia Department of Military Affairs and Public Safety, requests an exemption to continue leasing a vehicle to Perry & Associates Certified Public Accountants, A.C., in accordance with the terms of the April 6, 2016, lease agreement.

Hon. James W. Davis, Jr.  
March 31, 2017  
Page 2

non-profit corporation<sup>1</sup>—to run and manage the Shelter. Authorized specifically by West Virginia Code § 19-20-6a, the contract appropriated \$80,000 annually to the Foundation to operate the Shelter. You report that in practice, the Commission annually appropriated far more to the Foundation from its own funds—approximately \$220,000 in 2008-09; \$175,000 in 2009-10; \$175,000 in 2010-11; \$175,000 in 2011-12; \$175,000 in 2012-13; \$175,000 in 2013-14; \$175,000 in 2014-15; and \$144,000 in 2015-16.

In March 2008, the County Commission determined that its annual appropriations would not sufficiently cover the costs associated with running the Shelter and proposed a “special excess levy” to provide additional funds. The County submitted to vote at Hancock County’s regular primary election in May 2008 a special excess levy of \$100,000 annually, beginning in fiscal year 2009, for “the purpose of providing” “for the financial support of the Hancock County Animal Shelter Foundation.” In an order giving notice to the voters, the County Commission explained that the levy was necessary because “the maximum levies for current expenses . . . will not provide sufficient funds for the payment of current expenses of the County Commission of Hancock County, including expenditures for the purpose hereinafter set forth.” The levy capped the projected tax collection at \$100,000 per year for the fiscal years 2009, 2010, and 2011. Any monies collected beyond \$100,000 each year (due to increases in assessed value of the taxed properties) would “be transferred to the general fund of [Hancock] County for expenditure by said County for recreational purposes only.” The voters approved the levy, which ran for three years and concluded on June 30, 2012 (the end of fiscal year 2011).

In 2012, the County Commission proposed a “renewal [special excess] levy” to provide additional funds, as the County Commission had done in 2008. The County Commission submitted to vote at Hancock County’s regular primary election in May 2012 the renewal levy ballot to assess additional taxes on property in Hancock County for the fiscal years 2012, 2013, 2014, and 2015 “for the purpose of providing” “for the financial support of the Hancock County Animal Shelter Foundation.” In an order giving notice to the voters, the County Commission explained that the levy was necessary because “the maximum levies for current expenses . . . will not provide sufficient funds for the payment of current expenses of the County Commission of Hancock County, including expenditures for the purpose hereinafter set forth.” The renewal levy once again capped the projected tax collection at \$100,000 per year but, unlike the previously raised levy, placed specific restrictions on the purposes for which the raised monies could be used. Specifically the notice to the voters explained that \$80,000 per year (80%) would be for “operational costs, including animal care needs and shelter supplies” and \$20,000 (20%) would be used for “renovations to the current shelter.” Any monies collected beyond \$100,000 each year (due to increases in assessed value of the taxed properties) would still “be transferred to the general fund of [Hancock] County for expenditure by said County for recreational purposes

<sup>1</sup> It appears that although the Foundation is a registered 501(c)(3) organization, the Foundation allowed its registration as a charity to lapse with the West Virginia Secretary of State. The Foundation submitted forms to renew its delinquent registration; however, the Secretary of State rejected those forms, and sent a cease and desist letter instructing the Foundation to change its name to avoid confusion with the Shelter itself, and inviting the Foundation to resubmit the forms with a corrected name. The Foundation has not done so as of the release of this Opinion.

## AG OPINION

FILED

2017 APR 11 P 1:31

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

(304) 558-2021  
Fax (304) 558-0140

March 31, 2017



State of West Virginia  
Office of the Attorney General

Patrick Morrissey  
Attorney General

The Honorable James W. Davis, Jr.  
Prosecuting Attorney  
Office of the Hancock County Prosecuting Attorney  
1114 Ridge Ave.  
P.O. Box 924  
New Cumberland, West Virginia 26047

Dear Prosecutor Davis:

You have asked for an Opinion of the Attorney General regarding Hancock County’s use of funds left over from “special excess levies” approved by the voters of Hancock County in May 2008 and May 2012. 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 Office of the Attorney General.

Your correspondence raises the following legal questions, which are addressed in turn below:

- (1) Does the Hancock County Animal Shelter Foundation have the right to use or claim any of the remaining funds from the 2008 and 2012 special excess levies?
- (2) Does the County Commission have the authority to use the funds remaining from the special excess levies for its county animal shelter?

### Background

Your correspondence concerns two special excess levies related to the Hancock County Animal Shelter (“Shelter”), which is owned by the Hancock County Commission (“County Commission”) but was until recently run by the Hancock County Animal Shelter Foundation (“Foundation”) under a contract with the County Commission. Through the Shelter, the County Commission complies with its duties under West Virginia Code § 19-20-6 regarding the control, registration, and care and impoundment of stray or unwanted animals. Beginning on or around August 7, 1997, the County Commission entered into a contract with the Foundation—a private,

State Capitol Building 1, Room E-26, 1900 Kanawha Boulevard East, Charleston, WV 25305



only.” The taxpayers approved the renewal levy, which ran for four years and concluded on June 30, 2016 (the end of fiscal year 2015).

According to your correspondence, the County Commission has always maintained exclusive control over the funds from both levies. This included collecting the funds, storing them in a County Commission bank account, and meeting monthly to review the Foundation’s requests for distributions of monies from the levies and for reimbursement of expenses. “Upon approval” of requisitions and receipts provided by the Foundation, the County Commission would pay the Foundation from either the money collected by the levies or the County Commission’s regular monthly stipend to the Foundation. On occasion, the Commission would pay for expenses directly, usually for infrastructure repairs and improvements. The Foundation did not have direct access to any monies.

The focus of your Opinion request is a dispute over remaining funds from both the original levy and the renewal levy that has arisen following the County Commission’s recent decision to terminate its agreement with the Foundation. In March 2016, the County Commission gave the Foundation notice and the contract terminated as of midnight on July 1, 2016. Control and operation of the Shelter has returned to the County Commission, and approximately \$300,000 from the levies—approximately \$187,944 from the original levy and \$112,056 from the renewal levy—remains in the County Commission’s bank account. According to your estimate, the expenditures from the levies amounted to: \$75,415.70 in 2009-10; \$22,871.07 in 2010-11; \$13,839.46 in 2011-12; \$44,492.24 in 2012-13; \$62,891.79 in 2013-14; \$55,586.00 in 2014-15; and \$123,631.90 in 2015-16—sums that were all well below the total collections of the levies. You represent that the Foundation has been fully reimbursed for all services it provided under contract prior to termination.

The County Commission and the Foundation disagree over which entity may now claim these remaining funds from the levies. The Foundation believes that, because the levies instructed that the funds were “to provide financial support for the Hancock County Animal Shelter Foundation,” it may take funds from the levies to open its own, private animal shelter facility. In further support, the Foundation claims to have received (but has not produced) an email from either a present or a former County Commissioner, stating the Commissioner’s belief that the remaining levy money belongs to the Foundation. In contrast, the County Commission believes that it controls the funds and may continue to apply them to operate the Shelter.

#### Discussion

#### Question One: Does The Hancock County Animal Shelter Foundation Have The Right To Use Or Claim Any Of The Remaining Funds From The Special Excess Levies?

It is well-settled that a state may not levy taxes for private purposes. The U.S. Supreme Court has explained that “[t]he due process of law clause [in the U.S. Constitution] contains no specific limitation upon the right of taxation in the states, but it has come to be settled that the authority of the states to tax does not include the right to impose taxes for merely private purposes.” *Green v. Frazier*, 253 U.S. 233, 238 (1920). Similarly, our Supreme Court of Appeals

## AG OPINION

has said that “[t]he Legislature is without power to levy taxes or appropriate public revenues for purely private purposes.” Syl. Pt. 1, *State ex rel. Atkins v. Sims*, 130 W. Va. 645, 46 S.E.2d 81 (1947), see also *Atkins*, 130 W. Va. at 655, 46 S.E.2d at 86; see also *Lingamfelter v. Brown*, 132 W. Va. 566, 573, 52 S.E.2d 687, 691 (1949) (principle that “tax may be levied only for a public purpose” is “implicit in our form of government”). Taxes may only be levied for a “public purpose,” which the Supreme Court of Appeals has said to be “synonymous” with “government purpose.” *Lingamfelter*, 132 W. Va. at 575, 52 S.E.2d at 692.

This prohibition applies not only to the Legislature, but also to municipalities. “Municipalities derive all their power as well as their existence from the Legislature,” and thus their powers of taxation may never exceed those of the Legislature itself. *Booten v. Pinston*, 77 W. Va. 412, 89 S.E. 985, 989 (1915). And because the Legislature lacks the ability to levy taxes for a private purpose, municipalities must likewise lack that power. See Syl. Pt. 1, *Atkins*, 130 W. Va. 645, 46 S.E.2d 81.

To be sure, the restriction upon taxation for private purposes does not absolutely prohibit the payment of taxpayer funds to private persons. In certain circumstances, the “appropriation [of taxpayer funds] to a private person” may be for or considered a permissible public purpose. Syl. Pt. 1, *Atkins*, 130 W. Va. 645, 46 S.E.2d 81. Relevant here, the Legislature has expressly provided that a county commission has the authority to “contract with or reimburse any private incorporated society or association”—like the Foundation—“for the care, maintenance, control or destruction of dogs and cats.” W. Va. Code § 19-20-6a; see also 58 W. Va. Op. Att’y Gen. 207, at \*4 (Mar. 18, 1980) (“Code 19-20-6a leaves no doubt that the Marion County Commission may contract with the Humane Society to run an animal shelter.”).

We conclude that the Hancock County Animal Shelter Foundation may not use or claim any of the remaining funds from the levies. Although the County Commission may have been permitted by Section 19-20-6a to support the Foundation’s work while the Foundation was under contract and operating the Shelter, the Commission cannot do so now.<sup>2</sup> As you explain, the contract between the Commission and the Foundation terminated on July 1, 2016. The

<sup>2</sup> Though the West Virginia Supreme Court of Appeals has not addressed the merits of this issue, the Supreme Court of Appeals has considered claims involving one of the levies at issue in this letter. See *Cline v. Hancock Cnty. Comm’n*, No. 12-0799, 2013 WL 3388232 (W. Va. July 8, 2013) [*Cline I*]; *Cline v. Cnty. Comm’n of Hancock Cnty.*, 12-1418, 2013 WL 5525740 (W. Va. Oct. 4, 2013) [*Cline II*]. In *Cline I*, *Cline* challenged a similar levy, which was brought to vote in 2011. *Cline I*, 2013 WL 3388232, at \*1. The 2011 levy proposed “to provide financial support for the Hancock County Animal Shelter Foundation . . . for the fiscal years beginning July 1, 2012, July 1, 2013, and July 1, 2014.” *Id.* *Cline* alleged that the County Commission “lacked the authority to provide direct financial support to a private organization such as the Foundation” and also that the “Foundation’s goal of being a ‘low-kill’ animal shelter went beyond [the County Commission’s] statutory obligations to stray dogs and cats.” *Id.* When the proposed 2011 levy failed, the circuit court found *Cline*’s grievance to be moot and dismissed the case. *Id.* After the voters approved the May 2012 levy at issue in this letter, *Cline* asked the circuit court to reopen his case, arguing that the controversy was renewed by the approval of the May 2012 levy. *Id.* at \*1-2. The circuit court declined to do so. *Id.* at \*2. The Supreme Court of Appeals affirmed the circuit court’s dismissal of the case as moot. *Id.* In *Cline II*, *Cline* again attempted to challenge the May 2012 levy by filing a petition for writ of supersedeas. *Cline II*, 2013 WL 5525740, at \*1. The circuit court denied the petition for failure to state a claim and denied a request from *Cline* to reconsider and amend its order. *Id.* at \*2. *Cline* appealed, and the Supreme Court of Appeals affirmed. *Id.* at \*3.

Foundation now seeks to use the remaining levy money to open and operate a private shelter. That is not permissible as a matter of both state and federal law.

We need not answer whether the terms of the levies or the email of a single County Commissioner contemplate that all of the money from the levies belongs exclusively to the Foundation for its use as it sees fit. It does not matter if either or both is true. Regardless, the prohibition on levying taxes for a private purpose plainly bars the distribution of funds from the levies to the Foundation for any work it is doing in a purely private capacity.

**Question Two: Does The County Commission Have The Authority To Use The Funds From The Levies For Its County Animal Shelter?**

The answer to this question begins with the purposes for which the levies were raised. West Virginia Code § 11-8-25 states: "Except as otherwise provided in this article, boards or officers expending funds derived from the levying of taxes shall expend the funds only for the purposes for which they were raised." W. Va. Code § 11-8-25; see also Syl. Pt. 1, in part, *Thomas v. Bd. of Educ., McDowell Cnty.*, 167 W. Va. 911, 280 S.E.2d 816 (1981) [*Thomas II*]. "The general rule is that the purpose for which funds were raised at a special election levy is determined by the proposal approved by the voters at the polls." *Thomas v. Bd. of Educ., McDowell Cnty.*, 164 W. Va. 84, 88-89, 261 S.E.2d 66, 69 (1979) [*Thomas I*] (citing *Hans v. Cnty. Court of Wayne Cnty.*, 86 W. Va. 650, 104 S.E. 119 (1920); *Lawson v. Kanawha Cnty. Court*, 80 W. Va. 612, 92 S.E. 786 (1917); *Harner v. Monongalia Cnty. Court*, 80 W. Va. 626, 92 S.E. 781 (1917); *Brown v. Preston Cnty. Court*, 78 W. Va. 644, 90 S.E. 166 (1916)). Legal action may be brought when tax money is not properly applied to its purposes, see *id.*, or is spent in any "unauthorized manner," W. Va. Code § 11-8-26.

Given that one express purpose of the levies—to provide for the financial support of the Foundation—can no longer be executed, the disposal of the remaining funds from the levies depends upon whether a court would sever the portions of the levies that require funds to be provided for the Foundation. Generally speaking, when one provision of a law is void, a court must examine if the void aspect can be severed from the whole because "a statute may be constitutional in one part and unconstitutional in another." *State v. Fitzer*, 158 W. Va. 111, 130, 208 S.E.2d 538, 549 (1974). Severability depends on an examination of "legislative intent," the "most critical aspect" of which "involves the degree of dependency of statutes." *Louk v. Cormier*, 218 W. Va. 81, 96-97, 622 S.E.2d 788, 803-04 (2005) (quotations omitted). Thus, "[w]here the valid and the invalid provisions of a statute are so connected and interdependent in subject matter, meaning, or purpose as to preclude the belief, presumption or conclusion that the Legislature would have passed the one without the other, the whole statute will be declared invalid." Syl. Pt. 9, *Roberson v. Hatcher*, 148 W. Va. 239, 135 S.E.2d 675 (1964).

For special levies, in particular, the Supreme Court of Appeals has placed great weight on the purpose identified in the levy, stressing that collected funds must be used solely for the purpose for which a special levy was created. "Where a special fund is created or set aside by statute for a particular purpose or use, it must be administered and expended in accordance with the statute, and may be applied only to the purpose for which it was created or set aside, and not

AG OPINION

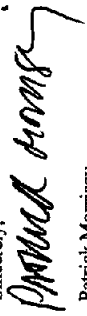
diverted to any other purpose or transferred from such authorized fund to any other fund." Syl. Pt. 7, *McGraw v. Hansbarger*, 171 W. Va. 758, 301 S.E.2d 848 (1983); see also *Harrison v. Lipscomb*, 178 W. Va. 343, 347 n.7, 359 S.E.2d 571, 575 n.7 (1987). More specifically, "[w]hen a levy election is held to raise money for a specific public purpose, the money must be applied toward that purpose." *Thomas II*, 167 W. Va. at 918, 280 S.E.2d at 820 (emphases added).

We believe that a court applying these principles to this matter would conclude that the requirement in both levies to provide financial support to the Foundation cannot be severed from the levies and, therefore, that the funds collected for that purpose cannot be used for a different purpose. In approving the levies, the voters approved the collection of \$100,000 a year for the clear and sole purpose of providing financial support to the Foundation." The levies made no provision for the County's use of the funds in the event that the Foundation ceased to run the Shelter. Nor can it be known that the voters would have approved either levy if the funds would be for the County's (or any other entity's) operation of the shelter and not the Foundation's. Voters could reasonably perceive a specific range of services offered by the Foundation's operation of the Shelter—such as the "Foundation's goal of being a 'low-kill' animal shelter," *Cline I*, 2013 WL 3388232, at \*1—that another entity would not provide. With respect to the additional instructions in the renewal levy, we do not believe that a court would read the instructions that 80% of the monies be used for operational costs, and 20% be used for renovations, to alter the levy's stated purpose of providing funding to support the "Foundation." These are simply restrictions designating how the Foundation was to use the funds.

As a result, we further believe that a court properly confronted with the question would likely conclude that funds remaining from both levies, which were collected specifically to support the Foundation should—as a general rule—be returned to the taxpayers. When a levy or tax is unconstitutional, due process requires that the government provide the taxpayers "meaningful backward-looking relief." *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco, Dep't of Bus. Regulation of Florida*, 496 U.S. 18, 31 (1990). The particular remedies and procedures that may be applicable here are beyond the scope of this Opinion.

We do not believe, however, that a court would reach this same conclusion regarding any funds collected under the levies in excess of \$100,000 per year. The levies expressly gave notice that such funds (resulting from increases in the assessed values of taxed properties) would be collected not for the support of the Foundation, but rather would be transferred to the general fund of Hancock County to be used only for recreational purposes. The voters specifically approved the collection and use of those limited funds for that separate public purpose, and the termination of the relationship between Hancock County and the Foundation does not affect the lawfulness of that part of the levies.

Sincerely,



Patrick Morrissey  
Attorney General

Elbert Lin  
Solicitor General

Katlyn Miller  
Assistant Attorney General

AG OPINION



State of West Virginia  
Office of the Attorney General

FILED  
2017 APR 11 P 1:30

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

(304) 558-2021  
Fax (304) 558-0140

Patrick Morrissey  
Attorney General

April 5, 2017

Mr. Matthew Harvey  
Prosecuting Attorney  
Office of the Prosecuting Attorney of Jefferson County  
120 S. George St., 2<sup>nd</sup> Floor  
Charles Town, WV 25414

Dear Prosecutor Harvey:

You have asked for an Opinion of the Attorney General regarding whether the Jefferson County Commission has any express or implied authority to indemnify an official for attorney fees incurred while defending himself or herself against an ethics complaint requesting no specific remedy or sanction. 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 in August 2014 a citizen of Jefferson County filed an ethics complaint with the West Virginia Ethics Commission against the then-President of the Planning Commission of Jefferson County. You note that the ethics complaint did not specify the remedy sought. The ethics complaint alleged that the President improperly used his position on the Jefferson County Planning Commission for financial gain in the following ways: (1) While serving on the Planning Commission, he allegedly appeared before the Jefferson County Board of Zoning Appeals to argue in favor of granting a seasonal use variance to the "All Good" rock concert; (2) While serving as Planning Commission liaison, he allegedly appeared before the Jefferson County Development Authority to influence a vote in favor of the application; (3) As President of the Planning Commission, he allegedly presided over meetings in which a proposed mass gathering ordinance was watered down; and (4) He allegedly refused to disqualify himself from participation in the Planning Commission's work on the mass gathering ordinance.

The West Virginia Ethics Commission dismissed the case, and the then-President is seeking to have the Jefferson County Commission pay his legal expenses in defending against the complaint. You further explain that your office previously requested an opinion concerning whether or not the county had authority to reimburse the President for attorney fees under the standards set forth in W. Va. Code § 11-8-31a(b). Now you ask whether the County Commission has express or implied authority to reimburse the President under any provision.

Your letter raises the following specific legal question:

*Does a county commission have express or implied authority to reimburse the President of the County Planning Commission for legal expenses paid in successfully defending against an ethics complaint seeking no specific remedy or sanction?*

We conclude that the West Virginia Supreme Court of Appeals would likely find that the county commission has express or implied authority to reimburse legal expenses paid in successfully defending against an ethics complaint seeking no specific remedy or sanction under the facts presented in your letter. While West Virginia Code § 11-8-31a does not contain that express authority, the Supreme Court of Appeals has held that county commissions have authority to reimburse legal expenses under a more general statute (West Virginia Code § 7-1-3) that governs county administration.

As explained in our prior letter, the West Virginia Supreme Court of Appeals has applied a three-part test for determining whether an official is entitled to reimbursement of attorney fees. In *Powers v. Goodwin*, 170 W. Va. 151, 291 S.E.2d 466 (1982), the Court surveyed the law of other jurisdictions on the authority of a government body to reimburse its officials for attorneys' fees and derived from that case law a three-part test. *Id.* at 157-160, 291 S.E.2d at 472-475. Specifically, the Court held that reimbursement is warranted where: (1) the underlying action "arise[s] from the discharge of an official duty in which the government has an interest"; (2) "the officer . . . acted in good faith"; and (3) "the agency seeking to indemnify the officer must have either the express or implied power to do so." *Id.* at 157, 291 S.E.2d at 472. While the first two prongs of the test are fact-specific, the Court in *Powers* concluded that the third prong had been satisfied for county commissions by the State Legislature through enactment of West Virginia Code § 7-1-3, which provides that such commissions have authority over "the superintendence and administration of the internal police and fiscal affairs of their counties." *Id.* at 157 n.3, 291 S.E.2d at 472 n.3 (quoting W. Va. Code § 7-1-3).

Following the *Powers* decision, the State Legislature enacted West Virginia Code § 11-8-31a, which expressly provides that county commissions have authority to indemnify officials for successfully defending against an action that seeks either (a) "[the official's] removal from office" or (b) "the recovery of moneys alleged to have been wrongfully expended." W. Va. Code § 11-8-31a. This provision appears to apply only to a particular type of action described in neighboring parts of the statute—namely, a civil or criminal action relating to the misuse of funds collected by the county through levies. W. Va. Code §§ 11-8-29, -30, -31.

## AG OPINION

Given this narrow legislative authorization, one might have argued that the Legislature was responding to *Powers* by clarifying that it was only authorizing reimbursement of attorney fees for a narrow category of actions.<sup>1</sup> But the Supreme Court of Appeals has not interpreted West Virginia Code § 11-8-31a in this narrow manner. To the contrary, the Court has concluded that county commissions still possess authority to reimburse fees under the more general language in West Virginia Code § 7-1-3 even in those circumstances where § 11-8-31a does not apply on its face—for example, where the commission does not have a quorum sufficient to make a determination under § 11-8-31a. *State ex rel. Smith v. Mingo Cnty. Comm'n*, 228 W. Va. 474, 481-82, 721 S.E.2d 44, 51-52 (2011) (citing *Syl. Pt. 3*, in part, *Powers*, 170 W. Va. 151, 291 S.E.2d 466). *State ex rel. Smith v. Mingo County Commission* held that in such cases, a court must apply the *Powers* framework to determine whether reimbursement of fees is appropriate, that is, an inquiry into whether the action arises out of an official duty and whether the officer acted in good faith. *Id.* at 482, 721 S.E.2d at 52.<sup>2</sup>

Further, the same year that the Court decided *Smith*, the Court applied the *Powers* test in the unrelated context of a claim for attorney fees expended in defending against an action challenging an official's eligibility for election. *State ex rel. Hicks v. Bailey*, 227 W. Va. 448, 451, 711 S.E.2d 270, 273 (2011). In *State ex rel. Hicks v. Bailey*, the Court explained that *Powers* recognized that county commissions have the general authority to award attorney fees under West Virginia Code § 7-1-3. *Id.*, 711 S.E.2d at 273 (citing *Powers*, 170 W. Va. at 157 n.3, 291 S.E.2d at 472 n.3). Consistent with *Powers* and *Smith*, the Court in *Bailey* concluded that § 7-1-3 only authorized a county commission to reimburse fees where the person was "discharging an official duty" and acting in good faith. *Id.*, 711 S.E.2d at 273.

On the specific facts in *Hicks*, the Court concluded that a county commission had no authority to reimburse attorney fees for an election contest because the contest did not arise from the discharge of an official duty. *Id.*, 711 S.E.2d at 273. In assessing whether an election contest is an official duty, the lower court had relied in the statement in *Powers* that "the voters have a legitimate interest in protecting their duly elected officials from being hector[ed] out of office." *Id.* at 451-52, 711 S.E.2d at 273-74. But the Supreme Court declined to extend such reasoning to cover election contests because the interest at stake is "purely personal." *Id.* at 452, 711 S.E.2d at 274. And although the public has an interest in ensuring that properly elected candidates hold office, the Court reasoned that the public does not have an interest in a particular person holding that office. *Id.*, 711 S.E.2d at 274.

<sup>1</sup> After *Powers*, the Legislature also enacted the Torts Claims Act, which requires county commissions to indemnify employees in certain civil actions. In *Atkinson v. County Commission of Wood County*, 200 W. Va. 380, 489 S.E.2d 762 (1997), the Court indicated that the Act might suggest a need to revisit its decision in *Powers*, but the Court has since declined to revisit its decision in *Powers*. *Atkinson*, 200 W. Va. at 386 & n.14, 489 S.E.2d 762, 768 & n.14.

<sup>2</sup> Indeed, the Court in *Smith* held that these two factors from *Powers* should govern the exercise of a county commission's discretion even in those instances when § 11-8-31a applies directly. *Smith*, 228 W. Va. at 482, 721 S.E.2d at 52.

Based on the reasoning in *Powers*, *Smith*, and *Hicks*, we think that the Supreme Court of Appeals would conclude that the Jefferson County Commission has authority under West Virginia Code § 7-1-3 to reimburse a county official for attorney fees where the action involved the discharge of an official duty and the official acted in good faith.

There are a few points worth noting in applying that general principle to the specific facts raised in your letter. *First*, we are not aware of a case in which the Court has applied the *Powers* framework in connection with an administrative proceeding as opposed to litigation. But the rationale of *Powers* seems broad enough to permit reimbursement for defense of a complaint brought before the state ethics board. The majority rule that the Court articulated when developing the *Powers* test permitted reimbursement for expenses incurred in the "discharge" of official duties, 170 W. Va. at 157, 291 S.E.2d at 472, which would seem to apply regardless of the forum in which the official was defending his or her conduct. Moreover, an adverse ruling from the ethics board could serve as the predicate for an action to remove the official from office. W. Va. Code §§ 6B-2-4(s)(2)-(3).

*Second*, and related, we are not aware of a case in which the Court applied *Powers* where the underlying action did not seek the official's removal from office or any other particular sanction. But unlike the specific text of West Virginia Code § 11-8-31a, which makes explicit reference to requests for removal from office, there appears to be no similar requirement when applying the *Powers* framework under West Virginia Code § 7-1-3. To the contrary, as the Court explained in *Powers* and reiterated in *Smith* and *Hicks*, the policy underlying reimbursement of fees applies broadly whenever "the voters have a legitimate interest in protecting their duly elected officials from being hectorated out of office through the constant charge of bankrupting attorneys' fees on their own resources." *Powers*, 170 W. Va. at 161, 291 S.E.2d at 476; *Smith*, 228 W. Va. at 481, 721 S.E.2d at 51; *Hicks*, 227 W. Va. at 451, 711 S.E.2d at 273. Therefore, we conclude that the Court would likely determine that where the *Powers* test is met, county commissions may reimburse their officials for fees even if the underlying action does not expressly seek the official's removal from office or some other specific sanction.

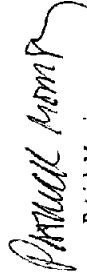
*Third*, while the actual application of *Powers* to these specific facts is beyond the scope of this opinion, it appears that the county commission would have strong bases to conclude that, unlike in *Hicks*, at least some of the claims in the ethics complaint arose from the discharge of an official duty. The complaint alleges, for example, that the president violated the West Virginia Ethics Act in presiding over multiple meetings of the Planning Commission in which he allegedly guided the watering down of a proposal that would benefit his client. The Court is likely to conclude that the complaint arose from the president's exercise of his official duty to preside over meetings of the Jefferson County Commission. See Bylaws of the Jefferson County Planning Commission, § 3.2, available at <http://www.jeffersoncountywv.org/home/showdocument?id=259>. And further, the Court is likely to determine that the government has an interest in the orderly conduct of Planning Commission meetings and the President's conduct when presiding over those meetings.

## AG OPINION

Of course, as noted above, prior to awarding fees, the county commission must also assure itself that the officer acted in good faith. Here, the fact that the complaint against the officer was dismissed appears to be some indication that the President acted in good faith, but that determination must be made by the county commission in the first instance.

Finally, although we are not aware of a case that presents these specific facts, the Supreme Court has previously suggested that the county commission's decision whether or not to award fees, while discretionary, could be challenged in an appropriate petition for mandamus to that Court. *Powers*, 170 W. Va. at 160, 291 S.E.2d at 475. In any such challenge, the Court would likely evaluate whether the county commission abused its discretion by engaging in an analysis of the *Powers* factors. *Smith*, 228 W. Va. at 482, 721 S.E.2d at 52.

Sincerely,



Patrick Morrissy  
Attorney General

Thomas M. Johnson, Jr.  
Deputy Solicitor General

Erica N. Peterson  
Assistant Attorney General

WEST VIRGINIA HEALTH CARE AUTHORITY  
CERTIFICATE OF NEED  
100 Dee Drive  
Charleston, West Virginia 25311-1600

April 10, 2017

**LEGAL NOTICE**

Sonia D. Chambers, Chair, West Virginia Health Care Authority, announces the following Certificate of Need activities for the week ending **April 7, 2017**.

**APPLICATIONS FOR EXEMPTION RECEIVED**

April 3, 2017 – University Healthcare Physicians, Inc., Martinsburg, Berkeley County, CON File #17-9-11057-X, for the provision of imaging services at private office physician practice in Martinsburg, Berkeley County.

April 5, 2017 – Edgewood Summit, Inc., Charleston, Kanawha County, CON File #17-3-11059-X, for the renovation of the plumbing and HVAC systems for The Ridgemoor at Edgewood Summit.

April 5, 2017 – The Underprivileged Children Foundation, Inc., Logan, Logan County, CON File #17-2-11060-X, for the provision of behavioral health outpatient therapy and counseling services for children and families in Logan, Logan County.

**HEARING NOTICES**

The Administrative Hearing and Prehearing Conference have been **CANCELLED** in the following matters:

April 5, 2017 - Elder Aide Services, Inc. d/b/a Right at Home, Charleston, Kanawha County, CON File #17-1-10999-PC, for the provision of personal care services in Mercer County.

April 5, 2017 - Elder Aide Services, Inc. d/b/a Right at Home, Charleston, Kanawha County, CON File #17-2-11000-PC, for the provision of personal care services in Raleigh County.

April 5, 2017 - Elder Aide Services, Inc. d/b/a Right at Home, Charleston, Kanawha County, CON File #17-3-11001-PC, for the provision of personal care services in Kanawha County.

The Administrative Hearing and Prehearing Conference have been **RESCHEDULED** in the following matters:

OTHER

April 4, 2015 Genesis Eldercare Rehabilitation Services, LLC, Kennett Square, Pennsylvania, CON File #16-9-10781-P and CON File #16-12/3/4/5/6/7-10782-P for the provision of medically necessary rehabilitation services, including physical therapy, occupational therapy and speech therapy, as well as respiratory therapy and wellness services in patients' homes or in other community settings in Berkeley and Jefferson counties, West Virginia (10781) and Barbour, Boone, Cabell, Fayette, Greenbrier, Harrison, Jackson, Kanawha, Lewis, Lincoln, Marion, Mason, Mercer, Monongalia, Putnam, Nicholas, Summers, Taylor, Raleigh, and Wayne counties, West Virginia (10782).

Prehearing Conference: **Wednesday, May 10, 2017, at 1:30 PM**  
Administrative Hearing: **Thursday, May 18, 2017, at 9:00 AM**

**PROJECT EXEMPT FROM REVIEW**

April 5, 2017 – Thirty Six Leasing Co., LLC, Cincinnati, Ohio, CON File #17-5-11043-X, for the acquisition of assets and operations of PWNR, LLC, d/b/a Worthington Nursing & Rehabilitation Center, a skilled nursing facility located in Wood County.

**NOTICE OF SUBSTANTIAL COMPLIANCE**

The following project has been implemented in substantial compliance with the Decision issued in this matter and the case file is now closed:

April 5, 2017 – Ohio Valley Medical Center, Inc., Wheeling, Ohio County, CON File #15-10-10599-P, related to the development of an ambulatory health care facility located on the campus of Wetzel County Hospital for the provision of neurology services; capital expenditure: \$1,260.

Further information may be obtained on any of the above-referenced projects by contacting Timothy E. Adkins, Director, Certificate of Need Division.



OTHER

Amended Notice of Prehearing Conference and Administrative Hearing  
**GENESIS ELDERCARE REHABILITATION SERVICES, LLC**  
CON File #16-9-10781-P  
**GENESIS ELDERCARE REHABILITATION SERVICES, LLC**  
CON File No. 16-1/2/3/4/5/6/7-10782-P  
Page 2

In Re: **GENESIS ELDERCARE REHABILITATION SERVICES, LLC**  
CON File No. 16-9-10781-P

**GENESIS ELDERCARE REHABILITATION SERVICES, LLC**  
CON File No. 16-1/2/3/4/5/6/7-10782-P

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**AMENDED NOTICE OF PREHEARING CONFERENCE  
AND ADMINISTRATIVE HEARING**

**PLEASE TAKE NOTICE** that pursuant to Chapter 16, Article 2D, and to Chapter 29A, Article 5, of the West Virginia Code of 1931, as amended, that Sonia D. Chambers, Chair of the West Virginia Health Care Authority, wishes to announce that the following proceedings have been scheduled for the above-noted applications:

**A PREHEARING CONFERENCE** will be held **Wednesday, May 10, 2017, at 1:30 p.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

**An ADMINISTRATIVE HEARING** will be held **Thursday, May 18, 2017, at 9:00 a.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

These applications concern the provision of medically necessary rehabilitation services, including physical therapy, occupational therapy and speech therapy, as well as respiratory therapy and wellness services in patients' homes or in other community settings in Berkeley and Jefferson County, West Virginia (10781) and Barbour, Boone, Cabell, Fayette, Greenbrier, Harrison, Jackson, Kanawha, Lewis, Lincoln, Marlton, Mason, Mercer, Monongalia, Putnam, Nicholas, Summers, Taylor, Raleigh, and Wayne County, West Virginia (10782).

You and any other "affected persons" as defined by W. Va. Code §16-2D-2 wishing to participate in the hearing of this application are directed to be present at both the prehearing conference and the administrative hearing.

The purpose of the prehearing conference is to designate parties to the hearing, to designate the issues for the hearing, resolve any procedural matters, receive any motions, establish the order of proceedings, receive a listing of the witnesses and a summary of direct testimony that will be offered at the hearing, receive a listing of evidence to be offered and copies of any documents to be offered such as reports or analysis prepared by expert witnesses including any financial reports and any other procedural matters. The prehearing conference will be conducted in conformance to Rule 16, West Virginia Rules of Civil Procedures for pretrial conferences.

In a hearing, any person has the right to be present or to be represented by counsel and to present oral or written arguments and relevant evidence. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matters.

**PLEASE TAKE NOTICE** that if the party who requested the hearing withdraws that request, then the hearing will be canceled.

The file on these applications are available for examination in the offices of the Health Care Authority from 9:00 a.m. to 4:00 p.m., Monday through Friday. If you have questions concerning this matter, please contact Tim Adkins, Certificate of Need Director, at (304) 558-7000 or toll free 1-888-558-7002.

Date: April 4, 2017

Sonia D. Chambers, Chair

Jim Justice  
Governor

Bill J. Crouch, Cabinet Secretary  
West Virginia Department of  
Health and Human Resources



**FILED**

2017 APR 12 AM 10:19  
Sonia D. Chambers, Chair  
Marilyn A. Goff, Board Member

OTHER

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

In Re: Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-1-10989-PC  
Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-2-11000-PC  
Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-3-11001-PC

**NOTICE OF CANCELLATION OF PREHEARING CONFERENCE  
AND ADMINISTRATIVE HEARING**

**PLEASE TAKE NOTICE** that pursuant to Chapter 16, Article 2D, and to Chapter 29A, Article 5, of the West Virginia Code of 1931, as amended, that Sonia D. Chambers, Chair of the West Virginia Health Care Authority, wishes to announce that Mulberry Street Management Services, Inc. d/b/a Coordinating Council for Independent Living has withdrawn its hearing requests in the above-captioned matters.

As such, the prehearing conference and administrative hearing in these matters have been **CANCELLED** and the files are now **CLOSED** and no further information regarding these applications will be accepted.

These applications concern the provision of personal care services in Mercer, Raleigh and Kanawha counties, West Virginia.

If you have questions concerning this matter, please contact Timothy Adkins, Director of Certificate of Need, at (304) 558-7000 or toll free 1-888-558-7002.

**Date:** April 5, 2017

  
Sonia D. Chambers, Chair