



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

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

May 13, 2015

Honorable Kristen Keller
Raleigh County Prosecuting Attorney
112 North Herber Street
Beckley, WV 25801

Dear Prosecutor Keller:

You have asked for an Opinion of the Attorney General regarding whether the Raleigh County Emergency Service Authority may own real property. 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 set forth in your correspondence with the Office of the Attorney General.

According to your letter and attached documents, questions arose regarding the power of the Raleigh County Emergency Service Authority (the "Authority") to own real estate when the Federal Government conveyed to the Authority 32 acres of real property commonly known as the "Agricultural Department Property." Specifically, the Raleigh County Attorney sent you a letter raising a question about the Agricultural Department Property and the Authority's power to accept the conveyance. The Raleigh County Attorney asserts that the Authority was established by "House Bill 2018" in 1982, and expresses uncertainty regarding the Authority's powers under House Bill 2018. You observe in your letter that you share the County Attorney's concerns and that the Authority currently owns other real property that it has substantially improved.

Your letter raises the following legal question:

May the Raleigh County Emergency Service Authority own real property?

We conclude that the Authority may own real property, provided that the ownership serves a legislatively-prescribed function of the Authority. In general, two independently sufficient sources of law provide the Authority with the power to own real property. *First*, the Authority's power to own real property is reasonably implied by the statutory grant of authority from the Legislature in the special law created by House Bill 2018. *See* Ch. 135, Acts of the

Legislature, 1982, at 775 (“The [A]uthority shall have all the powers necessary, convenient and advisable for the proper operation, equipment and management of emergency operations in Raleigh County.”). *Second*, the general grant of power under West Virginia Code § 15-5-2 to local organizations for emergency services—such as the Authority—also reasonably includes the implied power to own real estate as an “activit[y] necessary or incidental to the preparation for and carrying out of [its] functions.” W. Va. Code § 15-5-2(a). After setting forth some necessary background, we explain these conclusions in more detail below.

The Authority is a public corporation established by a special act of the West Virginia Legislature. *See* Ch. 135, Acts of the Legislature, 1982, at 774-776. Unlike a general law, *see* Syl. Pt. 2, *State ex rel. Taxpayers Protective Ass’n of Raleigh Cnty. v. Hanks*, 157 W. Va. 350, 350, 201 S.E.2d 304, 305 (1973), a special law is “one which relates to particular persons or things, or to particular persons or things of a class, or which operates on or over a portion of a class instead of all the class,” *State ex rel. Appalachian Power Co. v. Gainer*, 149 W. Va. 740, 758, 143 S.E.2d 351, 363 (1965) (quotations omitted). *See also Groves v. Cnty. Court of Grant Cnty.*, 42 W. Va. 587, 26 S.E. 460, 463 (1896) (“Special laws are those made for individual cases, or for less than a class requiring laws appropriate to its peculiar condition and circumstances; local laws are laws special as to place.”). “[T]he Legislature of this State has enacted into law hundreds of local and special acts.” *Kanawha Cnty. Pub. Library v. Cnty. Court of Kanawha Cnty.*, 143 W. Va. 385, 391, 102 S.E.2d 712, 716 (1958). *See, e.g., id.* 143 W. Va. at 401-02, 102 S.E.2d at 721-22.

The bill giving rise to the special act that created the Authority—House Bill 2018—was passed on March 11, 1982, and subsequently signed by the Governor. *See* Ch. 135, Acts of the Legislature, 1982, at 774. The special law was not enacted into the West Virginia Code and is publicly available in Chapter 135 of the 1982 volume of *Acts of the Legislature*. *See id.* Although the special act is now a statute and no longer in the form of a bill, we refer to the special act as “H.B. 2018” consistent with your usage and as is apparently customary in Raleigh County.

To determine the powers of the Authority, we must look to H.B. 2018. As a creation of statute, a public corporation such as the Authority possesses only the express or reasonably implied authority granted to it by the Legislature. *See Rogers v. City of S. Charleston*, 163 W. Va. 285, 290, 256 S.E.2d 557, 561 (1979) (“It is well settled that a public corporation created by statute is vested only with such powers and authority as are expressly given by the Legislature or as fairly arise by necessary implication from the express statutory grant or as are requisite to enable the corporation to carry out the function.”). Pertinent here, Section 2 of H.B. 2018 provides two broad grants of power:

The authority [1] shall have all the powers necessary, convenient and advisable for the proper operation, equipment and management of emergency operations in Raleigh County; and [2] except as otherwise especially provided in this act, shall have the powers and be subject to the duties which are conferred and imposed, respectively, upon local organizations for emergency services by article five, chapter fifteen of the code of West Virginia, . . . and by other provisions of general law relating to emergency services.

Ch. 135, Acts of the Legislature, 1982, at 775. Section 3 of H.B. 2018 further provides that as a corporation, the Authority “may contract and be contracted with, sue and be sued, plead and be impleaded, and shall have and use a common seal.” *Id.* at 775-76.

We find in H.B. 2018 two independently sufficient bases for the Authority to own real property. *First*, H.B. 2018 specifically grants the Authority “all the powers necessary, convenient and advisable for the proper operation, equipment and management of emergency operations in Raleigh County,” which seems broad enough to permit the ownership of real property in at least some circumstances. *Id.* at 775. As the West Virginia Supreme Court of Appeals has instructed, “[i]n the absence of any specific indication to the contrary,” we must give “words used in a statute . . . their common, ordinary and accepted meaning.” Syl. Pt. 5, in part, *Shaffer v. Fort Henry Surgical Assocs., Inc.*, 215 W. Va. 453, 599 S.E.2d 876 (2004) ((quotations and citations omitted)). Here, the phrase “all the powers necessary, convenient and advisable” is an expansive grant of authority by its plain terms, limited only by the three broad statutory functions of the Authority: “the proper *operation, equipment and management* of emergency operations in Raleigh County.” Ch. 135, Acts of the Legislature, 1982, at 775 (emphases added). We read this to mean that the Authority has the power, for example, to own a garage for the purpose of housing “equipment” used in “emergency operations in Raleigh County.” *Id.* But it could not own an apartment building in Kanawha County for leasing to private individuals for private residential purposes, for instance, because that purpose does not serve the “proper operation, equipment and management of emergency operations in Raleigh County.” *Id.*

Second, we believe the powers granted to emergency services authorities generally under Chapter 15 of the West Virginia Code—and incorporated expressly into H.B. 2018—also include the power to own real estate in some circumstances. *See* Ch. 135, Acts of the Legislature, 1982, at 774 (establishing the Authority as “an emergency service authority . . . in accordance with [Article 5, Chapter 15 of the West Virginia Code]”). West Virginia Code § 15-5-2(a) defines the functions and authority of organizations like the Authority, as follows:

“Emergency services” means the preparation for and the carrying out of all emergency functions, . . . [which] include, without limitation, fire-fighting services, police services, medical and health services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety and welfare of the citizens of this state, *together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.*

Id. § 15-5-2(a) (emphasis added). Similar to the first grant of power in H.B. 2018, the Authority’s power under Section 15-5-2(a) is quite broad. It has the authority to undertake “all other activities necessary or incidental to the preparation for and carrying out of the . . . functions” listed in that section—a list that the Legislature specifically indicated is “without limitation” and therefore non-exhaustive. *Id.*; *see Davis Mem’l Hosp. v. W. Va. State Tax*

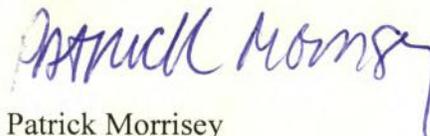
Comm'r, 222 W. Va. 677, 684, 671 S.E.2d 682, 689 (2008) (“[t]he term ‘includes’ in a statute is to be dealt with as a word of enlargement and this is especially so where . . . such word is followed by ‘but not limited to’ the illustrations given” (quotations omitted)). We believe that the power to own real property could, under the appropriate circumstances, be “necessary or incidental to preparing for and carrying out “emergency functions.” W. Va. Code § 15-5-2(a).

Although neither statute *expressly* grants the power to own real estate to the Authority, we do not believe this is meaningful because the Authority was not granted a specific list of powers that omitted the power to own real estate. Where the Legislature sets forth a specific list of powers, the failure to include the power to own real estate would be significant because, under settled principles of statutory construction, “the express mention of one thing implies the exclusion of another.” Syl. Pt. 3, *Manchin v. Dunfee*, 174 W.Va. 532, 327 S.E.2d 710 (1984). But here, the bases for the Authority’s powers are broad non-exclusive grants to which that principle of statutory construction does not apply.

We also do not believe that West Virginia Code § 15-5-13, which relates to certain gifts or grants from the federal government, affects the Authority’s power to own real property. Section 15-5-13 requires “consultation and . . . coordination” with the Secretary of Military Affairs and Public Safety any time “the federal government or any agency or officer thereof shall offer to any authority, corporation, partnership or other entity, public or private or the state . . . equipment, supplies, materials or funds by way of gift, grant or loan, for purposes relating to homeland security or emergency services.” *Id.* § 15-5-13. We do not find this provision to be relevant because it specifically identifies “equipment, supplies, materials or funds” but does not mention grants of land or real property.

In sum, we conclude that the Raleigh County Emergency Service Authority has authority to own real property under H.B. 2018 and the statutory provisions incorporated therein, provided that the ownership in each instance serves a statutory function assigned to the Authority by the Legislature. You did not ask, and we do not address, whether the Authority has the power to own the Agricultural Department Property. In any event, your letter and the attached documents do not set forth sufficient facts describing the purpose for which that property is being held.

Sincerely,



Patrick Morrisey
Attorney General

Elbert Lin
Solicitor General

J. Zak Ritchie
Assistant Attorney General