PATRICK MORRISEY
ATTORNEY GENERAL

June 12, 2013

The Honorable Jim E. Samples
Prosecuting Attorney
Office of the Prosecuting Attorney of Clay County, West Virginia
P.O. Box 25
Clay, WV 25043

Dear Prosecutor Samples,

You have asked for an Opinion of the Attorney General pertaining to the use of coalbed methane severance tax funds received by a county economic development entity under West Virginia Code § 11-13A-20a. 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 letter dated May 22, 2013, to the Attorney General's Office. In that letter, you assert that the Clay County Business Development Authority is a business development authority established pursuant to West Virginia Code § 7-12-1 *et seq.* You further explain that the funds would be used for the renovation of a property that is to be used as the headquarters and meeting facility for the Clay County Business Development Authority.

Your letter raises the following legal question:

> *May coalbed methane severance tax funds received pursuant to West Virginia Code § 11-13A-20a be used to renovate a property for use as the headquarters and meeting facility for the Clay County Business Development Authority?*

As a threshold matter, it is clear under West Virginia Code § 11-13A-20a that the Clay County Business Development Authority may use coalbed methane severance tax funds for certain purposes. The statute provides for coalbed methane severance tax funds to be distributed to county economic development entities established pursuant to West Virginia Code § 7-12-1 *et seq.* *See* W. Va. Code § 11-13A-20a(e). Such entities are authorized to use the distributed funds for "economic development projects and infrastructure projects." *Id.* § 11-13A-20a(h)(2). You represent that the Clay County Business Development Authority is a county economic development entity established pursuant to West Virginia Code § 7-12-1 *et seq.*

Whether the proposed renovation falls within the permissible statutory purposes is a question the Legislature committed specifically to the relevant county commission, subject to the Legislature's ultimate oversight. The Code expressly requires that "each county economic development entity" obtain written approval from "its respective county commission" before it may "expend[] any coalbed methane severance tax moneys." *Id.* § 11-13A-20a(h). In this case, the relevant county commission is the Clay County Commission. We understand that the Clay County Commission has yet to give that written approval. Furthermore, the Legislature requires a written annual accounting of all coalbed methane severance tax funds expended. By December 1 of each year, the county economic development entity or county commission must submit to the Joint Committee on Government and Finance "a written report setting forth the specific projects for which those funds were expended during the next preceding fiscal year, a detailed account of those expenditures[,] and a showing that the expenditures were made for the purposes required." *Id.* § 11-13A-20a(i). The Joint Committee on Government and Finance may "at any time" authorize an audit of distributed coalbed methane severance tax funds. *Id.* § 11-13A-20a(j).

A review of the facts presented and relevant state law suggests that the proposed renovation would fall within the permissible statutory purposes. The Code specifically defines the two permissible purposes: economic development projects and infrastructure projects. Under the plain language of the statute, renovating the Clay County Business Development Authority's headquarters and meeting facility would seem to qualify as either type of project. Moreover, there is no published opinion of the Supreme Court of Appeals of West Virginia that specifically addresses a county economic development entity's use of coalbed methane severance tax funds.

First, the proposed renovation appears to be an economic development project within the meaning of the statute. An "[e]conomic development project" is "a project in the state which is likely to foster economic growth and development in the area in which the project is developed for commercial, industrial, community improvement or preservation or other proper purposes." *Id.* § 11-13A-20a(h)(3)(A). The proposed renovation seems to fall squarely within that broadly worded provision given the statutory purpose of the Clay County Business Development Authority. County economic development entities are specifically created to "promote, develop and advance the business prosperity and economic welfare of the municipality or county for which it is created." *Id.* § 7-12-2. Improvements to the Clay County Business Development Authority's headquarters and meeting facility would therefore, by definition, be "likely to foster economic growth and development in the area in which the project is developed." *Id.* § 11-13A-20a(h)(3)(A).

Other sections of the West Virginia Code bolster the conclusion that the Legislature would want coalbed methane severance tax funds used to improve the facilities of a county economic development entity. *See Daniel v. Simms*, 49 W. Va. 554, 39 S.E. 690, 695 (1901) (noting the importance of related statutory provisions to the task of statutory interpretation). For example, in the West Virginia Tax Increment Financing Act, the Legislature found that "[c]ounty commissions need the ability to raise revenue to finance capital improvements and *facilities that are designed to encourage economic growth and development.*" W. Va. Code § 7-11B-2(a) (emphasis added). Similarly, the Legislature has expressly conferred on county economic

development entities the broad power to "do any and all things necessary or convenient for the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county in which it is intended to operate, its citizens and industrial complex," including the power "to acquire real property by gift, purchase or construction." *Id.* § 7-12-7(a)(3), (8). Both of these provisions suggest that the Legislature views the establishment and improvement of county economic development facilities as a high priority.

Second, renovating the Clay County Business Development Authority's headquarters and meeting area would also appear to be an infrastructure project within the meaning of the statute. An "[i]nfrastructure project" is "a project in the state which is likely to foster infrastructure improvements and covers post mining land use, water or wastewater facilities, stormwater systems, steam, gas, telephone and telecommunications, broadband development, electric lines and installations, roads, bridges, railroad spurs, drainage and flood control facilities, industrial park development, road or *buildings that promote job creation and retention*." *Id.* § 11-13A-20a(h)(3)(B) (emphasis added). Again, the statutory purpose of the Clay County Business Development Authority is instructive. County economic development entities are tasked with "stimulat[ing] and promot[ing] the expansion of all kinds of business and industrial activity which will tend to … provide maximum opportunities for employment." *Id.* § 7-12-2. The headquarters and meeting facility of the Clay County Business Development Authority thus seems clearly to be a "building[] that promote[s] job creation and retention," *id.* § 11-13A-20a(h)(3)(B), and the proposed renovation of that building would therefore constitute a permissible infrastructure project.

In sum, though written approval for the proposed renovation must come from the Clay County Commission, our review suggests that the proposal is a permissible expenditure of coalbed methane severance tax funds pursuant to West Virginia Code § 11-13A-20a. Under the plain language of the statute, the renovation appears clearly to constitute an economic development or infrastructure project as defined in the Code.

Sincerely,

Patrick Morrisey
Attorney General