



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

April 27, 1988

Gregory A. Tucker, Esquire
City Attorney
P. O. Box 909
Summersville, West Virginia 26651

Dear Mr. Tucker:

We are in receipt of Mr. Ralph Dunn's letter, written on your behalf, wherein he requested the opinion of this office regarding the imposition of a business and occupation tax by a municipality. More specifically, his letter asked:

"Given current changes in the Code of West Virginia as it relates to Business and Occupation Taxes, could you please advise at your earliest opportunity the maximum Business and Occupation Tax levy available, if any, to municipalities in each separate category set forth in the Code."

The changes in the West Virginia Code to which Mr. Dunn referred in his letter are presumed to be the result of the repeal of Chapter 11, Article 13, Sections 2a through 2c, 2e, and 2g through 2i, of the West Virginia Code of 1931, as amended, by Code 11-13-28, effective July 1, 1987.

The imposition of a business and occupation tax by a municipality is authorized by Code 8-13-5(a), which states, in pertinent part:

"Whenever any business activity or occupation for which the state imposed its annual business and occupation or privilege tax under article thirteen [§ 11-13-1 et seq.], chapter eleven of this code, prior to July one, one thousand nine hundred eighty-seven, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have

plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality."

Code 8-13-5(b) established the maximum rates which may be imposed by a municipality.

"In no case shall the rate of such municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j [§§ 11-13-2a to 11-13-2e, 11-13-2g to 11-13-2j], article thirteen of said chapter eleven, as such rates were in effect under said article thirteen, on January one, one thousand nine hundred fifty-nine, or in excess of one percent of gross income under section two-k [§ 11-13-2k] of said article thirteen, or in excess of three tenths of one percent of gross value or gross proceeds of sale under section two-m [§ 11-13-2m] of said article thirteen."

While certain provisions of Chapter 11, Article 13 have been repealed, Code 8-13-5 has remained in effect. In other words, the fact that Code 11-13-28 repealed virtually all aspects of the business and occupation tax has no effect on the ability of a municipality to impose such a tax under provisions of Code 8-13-5.

For the reasons stated above, it is the opinion of this office that a municipality may continue to impose a business and occupation or privilege tax at the rates set forth in Code 8-13-5(b).

Very truly yours,

Charles G. Brown
Attorney General

By *Mary Carol Holbert* Senior Assistant
Mary Carol Holbert

MCH: pkr