

## ANALYSIS AND OPINIONS OF INDEPENDENT COUNSEL

- I. Questions to be Answered by Independent Counsel Franklin & Prokopik for the exclusive use and benefit of the County Commission of Jefferson County.
  - A. What are the membership qualifications for the Jefferson County Development Authority, and the appointment obligations of the County Commission of Jefferson County, West Virginia?
  - B. Can the County Commission of Jefferson County make financial contributions and assist the operations of the Jefferson County Development Authority?
  - C. Can the Jefferson County Development Authority function with a board that does not have all required statutory members?
  - D. What options are available to the County Commission of Jefferson County regarding the creation of boards and/or organizations authorized by state law to engage in economic development activities for the benefit of Jefferson County?

### BACKGROUND INFORMATION

As you are all aware, Jefferson County, West Virginia is governed by a county commission form of governance as established in West Virginia Code § 7-1-1 *et seq.* Generally speaking, the County Commission of Jefferson County (“Commission”) is empowered to protect the health, safety, and welfare of its citizens, as well as exercising fiscal prudence, which involves the creation of economic opportunities for its citizens. The Commission’s power to govern within the County is limited by the statutory authority granted to cities and towns within the County, which have the authority to regulate land use and building regulations within their jurisdictional boundaries. *See* generally West Virginia Code § 8-1-1 *et seq.*

In terms of economic development, the Jefferson County Development Authority (“JCDA”) constitutes the properly created and established county development authority pursuant to West Virginia Code § 7-12-1 *et seq.* To that end, the management and control of the JCDA, its property, operations, business and affairs are vested in its board, which shall be appointed by the Commission, and which shall be no fewer than twelve (12) or more than twenty-one (21) persons. *Id.* Moreover, the JCDA is a public corporation that has the authority to contract, and the JCDA has the power to own, lease and sell property; borrow money; and issue bonds. *Id.*

As you are further aware, in the spring of 2017, ROXUL notified the West Virginia Development Office, the JCDA, and the City of Ranson that the Jefferson Orchards site had been selected for development, which was formally announced by press release dated July, 5, 2017. As a result, ROXUL began the permitting process with various governmental bodies. Concurrently, a payment in lieu agreement was prepared

for review by and among ROXUL, the Commission, the Board of Education of the County of Jefferson, West Virginia ("JCBOE"), the Sheriff of Jefferson County, West Virginia ("Sheriff"), the Assessor of Jefferson County, West Virginia ("Assessor"), and the City of Ranson. To that end, signatories, under either proper resolution or individual authority, executed said agreement as follows: the Commission on August 22, 2017; the Sheriff and Assessor on August 25, 2017; the JCBOE on September 25, 2017; and ROXUL on October 3, 2017. Thus, the payment in lieu of taxes agreement became effective on the date of the last signature; namely, October 3, 2017 ("Pilot Agreement").

Thereafter, the City of Ranson reviewed a final plat and site plan for ROXUL. On October 18, 2017 the City of Ranson unanimously approved the ROXUL site plan, and on October 19, 2017, the City of Ranson received the General Permit issued by the West Virginia Department of Environmental Protection ("WV DEP"). On or about October 20, 2017, Jefferson Orchards, Inc. and ROXUL closed on the sale of certain real property located in the City of Ranson and further described by deed recorded on October 25, 2017, in the Office of the Clerk of Jefferson County, West Virginia in Deed Book 1197, at page 652. On October 30, 2017, the City of Ranson issued a Site Development Building Permit with Conditions. On April 30, 2018, the WV DEP issued and Air Permit to ROXUL, and on May 7, 2018, the City of Ranson Planning Commission unanimously passed the ROXUL site plan as revised. As a result of the aforementioned permits, ROXUL began site improvements for the construction of its project.

Subsequent to the issuance of the above described governmental approvals, citizen opposition began to materialize against the ROXUL project. In fact, this opposition has fomented to the point where numerous civil actions have been filed in the Circuit Court of Jefferson County, West Virginia, several of which have named the JCDA and/or the Commission as party defendants. Specifically, Civil Action 18-C-144, styled *Jefferson County Vision, Inc. v. Jefferson County Development Authority* (Seeking injunctive relief for proposed water bond ordinance); Civil Action 18-C-157, styled *Jefferson County Vision, Inc. v. Jefferson County Development Authority* (Freedom of Information Complaint); Civil Action 18-C-158, styled *Jefferson County Vision, Inc. v. Jefferson County Commission* (Freedom of Information Complaint); Civil Action 18-C-171, styled *Jefferson County Vision, Inc., et al. v. ROXUL USA, Inc., et al.* (Complaint for Declaratory Judgment and Writ of Mandamus regarding PILOT Agreement); and Civil Action 18-C-201, styled *Jefferson County Vision, Inc., et al. v. Ranson City Council* (Complaint for Declaratory Judgment).

Amidst the backdrop of the aforementioned civil litigation, numerous board members of the JCDA tendered their resignations at the close of 2018. To that end, the board of the JCDA is currently comprised of nine (9) members, whom are classified as follows: one (1) representative of the Commission; one (1) representative of the City of Charles Town; one (1) representative of the City of Ranson; one (1) representative of the Town of Harpers Ferry; one (1) representative of labor; and five (5) general other representatives. With these facts in hand, we now turn to our questions presented.

## QUESTIONS PRESENTED

- A. What are the membership qualifications for the Jefferson County Development Authority, and the appointment obligations of the County Commission of Jefferson County, West Virginia?

As detailed hereinabove, the statutory authority for county and municipal development authorities can be found in West Virginia Code § 7-12-1 *et seq.* A cursory review of the Article will reveal that the legislature has expressly authorized the creation of county and municipal development authorities; their purposes; their management and control; their qualifications of members; and their powers generally. To that end, the management and control of county authorities, and the appointment and terms of members is detailed in West Virginia Code § 7-12-3, which provides as follows:

The management and control of a county authority, its property, operations, business and affairs shall be lodged in a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the county commission and be known as members of the authority. The county commission shall appoint one member to represent the county commission on the board and, for each municipality located within the county, the county commission shall appoint one member to represent the municipality. The city and town council of each municipality located within the county shall submit to the county commission the names of three persons, one of whom the county commission shall appoint to be the municipality's representative on the board. Other members of the board shall be appointed by the county commission and shall include representatives of business, industry and labor. The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the county commission may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the county commission to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The county commission may at any time remove any member of the board by an order duly entered of record and may appoint a successor member for any member so removed.

Other persons, firms, unincorporated associations, and corporations, who reside, maintain offices, or have economic interests, as the case may be, in the county, shall be eligible to participate in and request the county commission to appoint members to the development authority as the said authority shall by its bylaws provide.

As you can see, the clear and unambiguous express authority provided by the legislature proscribes that a county development authority shall be managed and controlled by a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the Commission. In that regard, the legislature has further proscribed certain statutorily required members to be appointed by the Commission as follows: one (1) board member who shall be a member of the Commission; one (1) board member for each municipality located within the county, who shall be selected from a list of three (3) names provided by each city and town council to the Commission; a representative of business; a representative of industry; and a representative of labor. Thus, accounting for the cities and towns chartered within Jefferson County, the statutorily required board

members are as follows: one (1) Commission member; one (1) member from the City of Ranson; one (1) member from the Town of Harpers Ferry; one (1) member from the Town of Bolivar; one (1) member from the Town of Shepherdstown; one (1) member from the City of Charles Town; one (1) representative of business; one (1) representative of industry; and one (1) representative of labor. (“Non-Discretionary Statutorily Required Members”).<sup>1</sup>

In addition to the Non-Discretionary Statutorily Required Members, the legislature has provided that the Commission shall appoint additional board members as presented to the Commission from other persons, firms, unincorporated associations, or corporations, who reside, maintain offices, or have economic interests, as the case may be, in the county. (“Discretionary Statutorily Required Members”). Therefore, the legislature has expressly provided that the Commission shall appoint not fewer than twelve nor more than twenty-one persons, whom shall be both Non-Discretionary Statutorily Required Members and Discretionary Statutorily Required Members, which for the JCDA is expressed as nine (9) Non-Discretionary Statutorily Required Members, and no less than three (3) Discretionary Statutorily Required Members nor more than twelve (12) Discretionary Statutorily Required Members.<sup>2</sup>

Having established the appointment obligations of the Commission for the JCDA, we must now turn to the qualifications required of those members as established by the legislature. Specifically, West Virginia Code § 7-12-4 provides as follows:

In addition to the appointing agencies as provided for in section three of this article, such other persons, firms, unincorporated associations and corporations, which reside or maintain offices in the county of the development authority, are eligible to participate in and request the governing body to appoint members to the development authority as the said authority by its bylaws provides. Members can also be drawn from citizens of a county contiguous to the county in which the county development authority is located regardless of their state of residence.

It is apparent that the legislature has established qualifications of members for the board that mirror the appointment requirements of West Virginia § 7-12-3; namely the Non-Discretionary Statutorily Required Members and the Discretionary Statutorily Required Members. In addition, the legislature has provided that a member can also be drawn from citizens of a county that is contiguous to the county in which the county

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<sup>1</sup> It is important to note that West Virginia is a Dillon Rule jurisdiction, which establishes that a county, municipality, or in this case a county development authority, may exercise only those powers expressly conferred by statute, necessarily or fairly implied by the express power in the statute, or essential and not merely convenient. Moreover, the submission of three (3) names from the city and town council of each municipality located within the county is not permissive; rather it is expressly required, and in the event that such a city and/or town council shall fail to produce three (3) names as expressly required after reasonable requests to provide such by the Commission, the sole remedy to compel compliance with the statute would be a writ of mandamus in the Circuit Court of Jefferson County, West Virginia.

<sup>2</sup> Therefore, as currently composed, the JCDA does not have either the required minimum membership of twelve (12) members nor the required nine (9) Non-Discretionary Statutorily Required Members.

development authority is located.<sup>3</sup> In essence, the legislature has provided that the qualifications of a board member is that they are a Non-Discretionary Statutorily Required Member, a Discretionary Statutorily Required Member, or a citizen of Berkeley County, West Virginia regardless of their state of residence.

B. Can the County Commission of Jefferson County make financial contributions and assist the operations of the Jefferson County Development Authority?

Yes. As detailed hereinabove, statutory authority for county commissions can be found in West Virginia Code § 7-1-1 *et seq.*, and statutory authority for county and municipal development authorities can be found in West Virginia Code § 7-12-1 *et seq.* Both statutory frameworks provide for cooperation between the Commission and the JCDA, as well as providing for contributions by the Commission to the JCDA. Specifically, West Virginia Code § 7-1-3i provides that a county commission may join together in the exercise of any of its powers, duties and responsibilities, or otherwise cooperate with any other county or counties, municipality or municipalities, the government of this State or of the United States in carrying out any lawful purpose not in conflict with the constitution of West Virginia.

Additionally, West Virginia Code § 7-12-12 provides for contributions by a county commission to a county development authority as follows:

Contributions may be made to the authority from time to time by the county commission of the county or any municipal corporation therein, and by any persons, firms or corporations which shall desire to do so. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the county commission and municipalities containing an itemized statement of its receipts and disbursements during the preceding quarter. Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the development authority is located. The books, records and accounts of the authority shall be subject to audit and examination by the office of the State Tax Commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

Therefore, the Commission has express statutory authority to make financial contributions, and to assist the operations of the Jefferson County Development Authority.

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<sup>3</sup> There has been conjecture stated in prior public comment sessions before the Commission that board members could come from other states that have counties contiguous with Jefferson County. This is not the case because for that to be authorized by the legislature the following language would have been used: "Members can also be drawn from citizens of an adjoining state with a county contiguous to the county in which the county development authority is located regardless of their state of residence."

- C. Can the Jefferson County Development Authority function with a board that does not have all required statutory members?

No. As detailed hereinabove, statutory authority for county and municipal development authorities can be found in West Virginia Code § 7-12-1 *et seq.* As further detailed hereinabove West Virginia Code § 7-12-3 clearly and unambiguously conferred the management and control of a county development authority to a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the Commission. The appointed board members shall be either Non-Discretionary Statutorily Required Members or Discretionary Statutorily Required Members. The lack of all required statutory members would create a failure on the part of the JCDA to comply with the membership requirements established by the legislature, and any action taken could be deemed to be an *ultra vires* act. Currently, the JCDA membership lacks the following Non-Discretionary Statutorily Required Members: (1) member from the Town of Bolivar; one (1) member from the Town of Shepherdstown; one (1) representative of business; and one (1) representative of industry. Until the Commission appoints these vacant memberships of the JCDA, the JCDA should be very careful in the conduct of its affairs as stated hereinabove.

Despite this cloud of uncertainty that hangs over the JCDA's affairs, there is one statutory provision that could prove to be helpful. Specifically, West Virginia Code § 7-12-7 establishes the powers of a county development authority as follows:

(a) The development authority is hereby given power and authority as follows: (1) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with laws; (2) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operation; (3) to enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and generally 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, without limiting any of the foregoing, the construction of any building or structure for lease to the federal government or any of its agencies or departments, and in connection therewith to prepare and submit bids and negotiate with the federal government or such agencies or departments in accordance with plans and specifications and in the manner and on the terms and conditions and subject to any requirements, regulations, rules and laws of the United States of America for the construction of said buildings or structures and the leasing thereof to the federal government or such agencies or departments; (4) to amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon such terms and conditions, for such consideration and for such term of duration, with or without option of renewal, as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (5) unless otherwise provided for in, and subject to the provisions of, such contracts, or leases, to operate, repair, manage and maintain such buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide such services, such as barber shops, newsstands, drugstores and restaurants, and to effectuate such incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the authority and such person, agency,

governmental department, firm or corporation; (6) to delegate any authority given to it by law to any of its officers, committees, agents or employees; (7) to apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation; (8) to acquire real property by gift, purchase or construction, or in any other lawful manner, and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of such real property which it may own, either by contract or at public auction, upon the approval by the board of directors of the development authority: Provided, That the funds received by the authority as a result of selling, leasing or otherwise disposing of all or part of such real property owned by the authority may be invested by the authority in a manner determined by the authority's board of directors to be in the best interest of the authority under an investment policy adopted and maintained by the board that is consistent with the standards of the Uniform Prudent Investor Act set forth in article six-c, chapter forty-four of this code: Provided, however, That for short-term investments the board of directors shall consult with the State Treasurer prior to investing funds; for long-term investments, the board shall consult with the Investment Management Board and compare the rate of return on investment for the previous three years and compare the expense loads for the past three years; if the comparison for the Investment Management Board is more favorable, the Board must invest the funds with the Investment Management Board; (9) to purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction: Provided further, That the funds received by the authority as a result of selling, leasing or otherwise disposing of all or part of such personal property owned by the authority may be invested by the authority in a manner determined by the authority's board of directors to be in the best interest of the authority under an investment policy adopted and maintained by the board that is consistent with the standards of the Uniform Prudent Investor Act set forth in article six-c, chapter forty-four of this code: And provided further, That for short-term investments the board of directors shall consult with the State Treasurer prior to investing funds; for long-term investments, the board shall consult with the Investment Management Board and compare the rate of return on investment for the previous three years and compare the expense loads for the past three years; if the comparison for the Investment Management Board is more favorable, the board must invest the funds with the Investment Management Board; (10) pursuant to a determination by the board that there exists a continuing need for programs to alleviate and prevent unemployment within the county in which the authority is intended to operate or aid in the rehabilitation of areas in said county which are underdeveloped, decaying or otherwise economically depressed and that moneys or funds of the authority are necessary therefor, to borrow money and execute and deliver the authority's negotiable notes, mortgage bonds, other bonds, debentures and other evidences of indebtedness therefor, on such terms as the authority shall determine and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its real or personal property and facilities in connection with the issuance of mortgage bonds; (11) to raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen, chapter eight of this code, it being hereby expressly provided that a development authority created under this article is a governing body within the definition of that term as used in article sixteen, chapter eight of this code; and (12) to expend its funds in the execution of the powers and authority herein given, which expenditures, by the means authorized herein, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest, and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) The amendment of this section enacted in the year 1998 is intended to clarify the intent of the Legislature as to the manner in which an authority may sell, lease or

otherwise dispose of real and personal property owned by an authority and shall be retroactive to the date of the prior enactment of this section.

(c) Notwithstanding any provision of this code to the contrary, any development authority participating in the Appalachian Region Interstate Compact pursuant to chapter seven-a of this code may agree to a revenue and economic growth-sharing arrangement with respect to tax revenues and other income and revenues generated by any facility owned by an authority. Any development authority or member locality may be located in any jurisdiction participating in the Appalachian Region Interstate Compact or a similar agreement for interstate cooperation for economic and workforce development authorized by law. The obligations of the parties to any such agreement shall not be debt within the meaning of section eight, article X of the Constitution of West Virginia. Any such agreement shall be approved by a majority vote of the governing bodies of the member localities reaching such an agreement but does not require any other approval.

(d) "Member localities" means the counties, municipalities or combination thereof which are members of an authority.

A quick review of these powers reveals that county development authorities have a broad grant of power and authority relative to economic activities. Most important to our analysis is subsection (a)(6) which provides that a county development authority may delegate any authority given to it by law to any of its officers, committees, agents or employees. Thus, it is recommended that the JCDA review its prior minutes to determine if there has been a proper delegation of authority as provided for in subsection (a)(6) by the board, and if so, any current actions taken by any of the authorized officers, committees, agents or employees pursuant to a proper delegation of authority by the board would be permitted and consistent with the statute. Finally, it is also important to note that the legislature intended the article regarding county development authorities to be liberally construed as giving to the authority full and complete power reasonably required to give effect to the purposes thereof. *See West Virginia Code § 7-12-15.*<sup>4</sup>

Separate and apart from this analysis of possible limited action on behalf of the JCDA by authorized officers, committees, agents or employees, it should be noted that the current membership and actions of the JCDA board are under extreme scrutiny. In fact, the issues of membership and lawful actions of the JCDA board are currently under review by the Circuit Court of Jefferson County. Therefore, in light of this ongoing judicial review, it would be prudent if the JCDA board would refrain from holding formal meetings or taking any formal actions until such matters are resolved by the Court, because any other actions taken by the board could invite additional litigation.

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<sup>4</sup> It has been suggested that West Virginia Ethics Commission Advisory Opinion No. 2007-11 is dispositive of the question presented; however, this position must fail because said Advisory Opinion is limited to questions arising under the Open Governmental Proceedings Act and does not purport to interpret other laws or rules. Moreover, said Advisory Opinion is further distinguishable from the question presented because the inquiry before the Ethics Commission dealt with whether the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners was required to count two (2) newly created statutory positions for the purposes of establishing a quorum for a meeting. As this Advisory Opinion has no precedential effect, and did not pertain to an analysis of required membership under West Virginia Code § 7-12-3, it should be disregarded.



- D. What options are available to the County Commission of Jefferson County regarding the creation of boards and/or organizations authorized by state law to engage in economic development activities for the benefit of Jefferson County?

Continuation of the JCDA and Committees

The obvious first option available to the Commission is to continue its involvement with the JCDA, which comports with the statutory requirements of West Virginia Code § 7-1-1 *et seq.*, and West Virginia Code § 7-12-1 *et seq.* detailed hereinabove. It is readily apparent that this cooperative relationship between the Commission and the JCDA has produced tangible results in the creation of economic opportunities for the citizens of Jefferson County, and it is anticipated that these results will continue in the future. Additionally, the Commission could form an advisory committee that also focuses on the creation of economic opportunities for the citizens of Jefferson County. Such a committee could be chaired by the County's JCDA representative, and could focus on county specific objectives for economic development activities.

Area Development Corporations

Additional review of the West Virginia Code provides several other options for economic development activities in the State of West Virginia. As detailed hereinabove, West Virginia Code § 7-1-3i provides that a county commission may join together in the exercise of any of its powers, duties and responsibilities, or otherwise cooperate with any other county or counties, municipality or municipalities, the government of this State or of the United States in carrying out any lawful purpose not in conflict with the constitution of West Virginia. This code provision is cross referenced with area development corporations as detailed in West Virginia Code § 8-32-2, which Article is entitled Intergovernmental Relations – Contributions to or Involvement with Nonstock, Nonprofit Corporations or Health Institutions for Public Purposes. Specifically, Part II – Area Development Corporations provides as follows:

Every municipality and county commission is hereby empowered and authorized to become associated with and to participate as a member of any area development corporation chartered as a nonstock, nonprofit corporation under the laws of this state for the purposes of promoting, developing and advancing the business prosperity and economic welfare of the area embraced, its citizens and its industrial complex; encouraging and assisting through loans, investments or other business transactions in locating new business and industry within such area and rehabilitating and assisting existing businesses and industries therein; stimulating and promoting the expansion of all kinds of business and industrial activity which will tend to advance, develop and maintain economic stability and provide maximum opportunities for employment in such area; cooperating and acting in conjunction with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural and recreational developments within such area; and furnishing money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite for the promotion, development and conduct of all types of business, agricultural and recreational activities within each area: Provided, That it is specified in the charter of

such corporation that no member trustee or member of the board of directors (by whatever name the same may be called) of the corporation shall receive any compensation, gain or profit from such corporation, and such corporation is operated in compliance with all charter provisions. The Legislature hereby finds that the aforesaid purposes of such nonstock, nonprofit area development corporations are for the general welfare of the public and are public purposes. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

Every municipality and county commission is hereby empowered and authorized to contribute to the cost of the operations and projects of such area development corporation by appropriating for such purposes money from its general funds not otherwise appropriated. Every municipality and county commission is hereby empowered and authorized, notwithstanding any other provision of this chapter to the contrary, to transfer and convey to such area development corporation property of any kind heretofore acquired by such municipality or county commission for or adaptable to use in industrial and economic development, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as such municipality or county commission shall deem proper.

Every municipality or county commission shall require as a condition of any such appropriation, transfer or conveyance that the area development corporation receiving the same shall upon demand at any time by such municipality or county commission make a full and complete accounting thereto of all receipts and disbursements and shall in every event without demand, within thirty days after the close of the quarter, make to such municipality or county commission a report containing an itemized statement of its receipts and disbursements during the preceding quarter, and make available to audit and examination by the office of the State Tax Commissioner and any other proper public official or body its books, records and accounts.

Under no circumstances whatever shall any action taken by any municipality or county commission under the authority of this section give rise to or create any indebtedness on the part of the municipality or county commission, the governing body of such municipality or county commission, any member of such governing body or any municipal or county commission official or employee: Provided, That any public entity holding title to real property, and considering transfer of such real property to any municipality or county commission for the purpose of conveying real property to any such area development corporation will publish notice by a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area will be the municipality or county involved. This notice will include the property to be transferred, the area development corporation receiving such property, and the date, time, and place when such public entity will conduct an open hearing to consider public comment regarding the intended transfer. Such notice shall be published initially at least sixty days prior to the published date of the public hearing.

In essence the West Virginia Code provides that every municipality and county commission is empowered and authorized to become associated with and to participate as a member of any area development corporation chartered as a nonprofit corporation for the purposes of promoting, developing and advancing the business prosperity and economic welfare of the area embraced. To that end, every municipality and county commission is further empowered and authorized to contribute to the cost of the operations and projects of such area development corporation by appropriating for such purposes money from its general funds not otherwise appropriated. Moreover, area development corporations can assist through loans, investments or other business

transactions in locating new business and industry within such area; provided, that under no circumstances whatever shall any action taken by any municipality or county commission under the authority of this section give rise to or create any indebtedness on the part of the municipality or the county commission. Finally, the legislature did not prohibit a county commission from membership in an area development corporation and a county development authority.<sup>5</sup>

I believe that the legislation regarding county development authorities, municipal development authorities, and municipal/county area development corporations was drafted with the intent to give flexibility to all counties and municipalities in the State of West Virginia due to the vast differences that exist statewide. Specifically, the state has many rural counties that could not afford to fund or participate in a county development authority; thus, such counties could join forces with a municipality to create an area development authority to reduce costs while reaping the benefits of economic development activities. Additionally, the state has several counties that are urban and/or suburbanizing counties, and these counties, along with the municipalities therein, should have the opportunity to fund or participate in a county, or municipal, development authority, as well as the opportunity to create an area development authority. It is apparent that these options are well suited for counties and municipalities that border adjacent states, as the synergy afforded by the legislature could assist in the promotion of economic development activities in such an area with fiscal prudence.

Therefore, in relation to Jefferson County, the Commission could move forward with a municipality, or municipalities, to form and create an area development corporation(s) pursuant to the aforementioned provisions of the West Virginia Code. Specifically, an area development corporation could focus on a discreet area with a stated purpose that is defined and guided by provisions of the County's Comprehensive Plan regarding land uses, as well as the underlying desire of the municipality and the Commission. For example, an area development corporation could be created among the county and the Town of Bolivar, and the stated economic development activities that could be focused on are tourism, historic preservation, and eco-tourism activities.

#### *Joint Undertakings by County Development Authorities*

Moreover, the legislature has further provided for additional types of jointly coordinated economic development activity in the form of joint undertakings by county development authorities, and joint development entities. See West Virginia Code § 7-12-9a and West Virginia Code § 7-12-9b. Specifically, the legislature has found and declared that the citizens of the state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, county economic development authorities should share in the tax revenues derived from joint programs regardless of the county in which they are located. See West Virginia Code § 7-12-9a. This type of joint undertaking may be conducted with any three (3) or more county development authorities who will share expenses and proceeds from joint

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<sup>5</sup> It should be noted that West Virginia Code § 7-5-18 provides for a county court's membership and participation in area development corporations.

economic development authorities. *Id.* Finally, and perhaps the most favorable benefit of joint undertakings by county development authorities is the grant available to any county economic development authority which enters into such undertakings in the amount of \$100,000.00. *Id.*

Therefore, in relation to Jefferson County, the JCDA could move forward with the development authorities of Berkeley County and Morgan County to create a joint undertaking by county development authorities. As you could imagine, the theme of such an undertaking would likely focus on a common theme to all counties, or focus on an attribute that exists in one county that could produce viable benefits and proceeds to all counties. Specifically, a joint undertaking could focus on the Potomac River, which is adjacent to all three counties, and upon which certain ramps, trails, or other features could be created and maintained for economic development activities which are focused on are tourism, historic preservation, and eco-tourism activities.

#### Joint Development Entity

Lastly, the legislature has further found that the citizens of the state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, county governing bodies, municipal governing bodies and county and municipal development authorities should be authorized to organize and jointly own all of the partnership, ownership and membership interests in a partnership, corporation or limited liability company for the sole purpose of undertaking jointly through their joint ownership of or membership in the partnership, corporation or limited liability company any project or projects that an authority established pursuant to this article would be permitted to undertake. *See* West Virginia Code § 7-12-9b. This coordinated effort which is defined as a “joint development entity” can be created with any combination of two or more county governing bodies, municipal governing bodies, municipal development authorities or county development authorities who will hold all of the partnership, ownership or membership interests in a partnership, corporation or limited liability company for the sole purpose of which is to develop and own one or more joint economic development projects. *Id.* Moreover, the joint development entity will be governed by the applicable general law of partnerships, corporations or limited liability companies, and the joint development entity shall have the powers, rights and privileges of an authority as set forth in sections seven, eight, nine, ten, eleven, twelve and fourteen of this article. *Id.* Finally, a joint development entity is exempt from all state and local taxation and all real and personal property owned by a joint development entity, or which the joint development entity may acquire to be leased, sold or otherwise disposed of, is exempt from taxation by the state or any county, municipality or other levying body as public property. *Id.*

Therefore, in relation to Jefferson County, the Commission could create a joint development entity with a county governing body, a municipal governing body, a municipal development authority or county development authority, and the created joint development entity would have the powers, rights and privileges of an authority as detailed in the article. The real benefit created by a joint development entity is that it is

tailor made for a "county centric" project or projects. In essence, a joint development entity would remove barriers that may exist in the form of jurisdiction boundaries, as well as transportation and other infrastructure; thus, leading to regional cooperation and reductions in duplicitous functions. Specifically, a joint development entity could focus on real property that is co-located in the county and a municipality. Rather than encourage annexation, the county and the affected municipality could create a joint development entity to develop the joint economic development project. It must also be noted that the legislature has clearly and unambiguously stated that a joint development entity is exempt from all state and local taxation and all real and personal property owned by a joint development entity, or which the joint development entity may acquire to be leased, sold or otherwise disposed of, is exempt from taxation by the state or any county, municipality or other levying body as public property. As we are all acutely aware, this is an extreme advantage to Jefferson County due to its proximity to other states who competitively vie for many of the same economic development projects.

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Gregory W. Kennedy, Esquire