

**OFFICE OF THE PROSECUTING ATTORNEY
CALHOUN COUNTY, WEST VIRGINIA**

Post Office Box 337
Grantsville, West Virginia 26147
Tel: (304) 354-6170
Fax: (304) 354-6703
Nigel.E.Jeffries@wv.gov

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Calhoun County Commission
P O Box 230
Grantsville, WV 26147

MEMORANDUM

The Calhoun County Commission has requested an opinion on a legal issue involving the possible conveyance of Wayne Underwood Field to a private purchaser. The following opinion is based on information provided to my office from Commissioner Michael Hicks. In summary, there is no statutory mechanism for a county, municipality, or other political subdivision of the state of West Virginia to convey publicly-owned real property to a private purchaser without a public auction.

LEGAL AUTHORITY

1. West Virginia Code §7-3-3 provides in full:
 - (a) Except as may be prohibited by law or otherwise, the county commission of a county is authorized by law to sell or dispose of any property, either real or personal, belonging to the county or held by it for the use of any district thereof. The property shall be sold either at an on-site public auction or by utilizing an Internet-based public auction service, and the sale shall be conducted by the president of the county commission, but before making the sale, notice of the time, terms, manner and either the location of the sale or the Internet-based public auction service to be utilized, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the publication is the county: *Provided*, That this section does not apply to the sale of any one item of property of less value than \$1,000.

(b) The provisions of subsection (a) of this section concerning sale at public auction do not apply to a county commission selling or disposing of its property for a public use to:

(1) The United States of America, its instrumentalities, agencies or political subdivisions;

(2) The State of West Virginia, or its political subdivisions, including county boards of education, volunteer fire departments, and volunteer ambulance services; or

(3) Any community center organization already in existence on the effective date of the amendments to this section made during the 2020 Regular Session of the Legislature or nonprofit senior center organization, or any authority, commission, instrumentality, or agency established by act of the State of West Virginia or any of its political subdivisions.

(4) For all sales made pursuant to this subsection, county commissions are not required to exclusively consider the present commercial or market value of the property; and

(5) A sale under the provisions of this subsection may not be for less than \$1.

(c) For all real property conveyed or sold by a county commission to a volunteer fire department, volunteer ambulance service, or any nonprofit community center organization or nonprofit senior center organization or any other authority, commission, instrumentality or agency, under the provisions of subsection (b) of this section, the real property shall revert back to the county commission if the volunteer fire department, volunteer ambulance service, nonprofit community center organization or nonprofit senior center organization, authority, commission, instrumentality or agency proposes to dispose of the property, unless the county commission explicitly disclaims this reversionary right in writing in the deed of conveyance.

2. West Virginia Code §8-12-18 provides, in pertinent part:

(a) Every municipality, municipal building commission created pursuant to §8-33-1 et seq. of this code, and municipal development authority created pursuant to §7-12-1 et seq. of this code is authorized to sell, lease as lessor, or dispose of any of its real or personal property or any interest therein or any part thereof (other than a public utility which shall be sold or leased in accordance with the provisions of §8-12-17 of this code), as authorized in §1-5-1 et seq. of this code, or to the United States of America or any agency or instrumentality thereof, or to the state or any agency or instrumentality thereof, for a public

purpose for an adequate consideration, without considering alone the present commercial or market value of such property.

(b) In all other cases involving a sale, any municipality is hereby empowered and authorized to sell any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration, the property to be sold at public auction at a place designated by the governing body, or by using an Internet-based public auction service, but before making any sale, notice of the time, terms, and place of sale, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication shall be the municipality. The requirements of notice and public auction shall not apply to the sale of any one item or piece of property of less value than \$1,000 and under no circumstances shall the provisions of this section be construed as being applicable to any transaction involving the trading in of municipally owned property on the purchase of new or other property for the municipality and every municipality shall have plenary power and authority to enter into and consummate any trade-in transaction.

DISCUSSION

Thus, as is evident from the foregoing Code provisions, municipalities are under the same restrictions as counties for conveying publicly-owned property to private purchasers. *Cf.* W. Va. Code §7-3-3 and W. Va. Code §8-12-18. *See also, Rogers v. South Charleston*, 163 W. Va. 285, 256 S.E.2d 557 (1979). Thus, a conveyance of Wayne Underwood Field to Grantsville may be done without a public auction of the property, and with no consideration, but a subsequent conveyance of the real property to a private purchaser would be prohibited under West Virginia Code §8-12-18 which requires a public auction to consummate the sale of municipal real property to a private purchaser. This requirement mirrors West Virginia Code §7-3-3. Moreover, the Little Kanawha Area Development Corporation is not a “community center organization” or “nonprofit senior center organization, or any authority, commission, instrumentality, or agency established by act of the State of West Virginia or any of its political subdivisions” for purposes of West Virginia Code §7-3-3. Failure to abide by the foregoing Code provisions would render

any deed or contract between a political subdivision and a private purchaser invalid. *See Op. Att'y Gen.*, Feb. 5, 1970

There are two options available at this juncture. First, the parties may wait for a change in the law. Next, the Calhoun County Commission may convey the property to Grantsville who may then lease the property to the Foundation for a term not to exceed fifty (50) years, renewable by agreement, for adequate consideration. Article 3, Chapter 7 of the West Virginia Code does not specifically permit the county commission to lease property in this manner. However, West Virginia Code §8-12-18 provides:

[i]n all other cases involving a lease, any municipality is hereby empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration and for a term not exceeding 50 years. Every lease shall be authorized by resolution of the governing body of the municipality, which resolution may specify terms and conditions which must be contained in such lease: Provided, That before any proposed lease is authorized by resolution of the governing body, a public hearing on the proposed lease shall be held by the governing body after notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication shall be the municipality. The power and authority granted in this subsection shall be in addition to, and not in derogation of, any power and authority vested in any municipality under any constitutional or other statutory provision now or hereafter in effect.

Under the foregoing provision all that is required is a public hearing on the lease rather than a public auction. I do not know if this is an acceptable resolution for Ms. Merch, but at the present, it may be the only viable option that would permit the Foundation to take a leasehold interest in the property without having to have the property go to public auction. Of course, the Calhoun County Commission would be parting with the property under this option. Nevertheless, the Board of Education would still possess a reversionary interest based on the deed from 2002 conveying the property to the County.

Please let me know if my office can be of further assistance in this matter.

Respectfully,

Nigel E. Jeffries