

Berkeley County Health Department
122 Waverly Ct
Martinsburg, WV 25403-1214
304-263-5131



Morgan County Health Department
137 War Memorial Dr
Berkeley Springs, WV 25411-1743
304-258-1513

Berkeley-Morgan County Board of Health

122 Waverly Ct
Martinsburg, West Virginia 25403-1214
304-263-5131

AGENDA

Board of Health Meeting

Location: Zoom Meeting
October 18, 2021
4:00pm

Call to Order/Opening Comments – Lisa Poland

Approval of Agenda

Review/Acceptance of Minutes

Departmental Reports:

- **Nursing Report – Angela Gray**
- **Epi Report – Robert Deener**
- **Environmental Report – Cara Harding**
- **Threat Prep Report – Jennifer Schetrompf**
- **Admin/Financial Report – Bill Kearns**
- **Health Officer Report – Dr. Kevin McLaughlin**

Public Comment:

Unfinished Business: None

New Business: None

-Adjourn

Join Zoom Meeting

<https://us02web.zoom.us/j/88699984090?pwd=K1l2aFVsQ1lWZjBUNFduWHNoNTkvZz09>

Meeting ID: 886 9998 4090

Passcode: 202788

+1 301 715 8592 US (Washington DC)

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Minutes of Berkeley-Morgan County Board of Health September 20, 2021

Attending Members: Mary Jane Rinard, Dave Hansen, Theresa McCabe, Lisa Poland, Jane McCloud
Staff: Bill Kearns, Cara Harding, Robert Deener, Dr. McLaughlin, Angie Gray, Jennifer Schetrompf
Guest: Jim Barnhart
Call to order at 4:00 p.m. made by Lisa Poland

Approval of Agenda: Theresa McCabe made a motion to approve the agenda as submitted.
Seconded by Jane McCloud. All in Favor-Motion passed.

Minutes from Previous Board Meeting: Jane McCloud motion to approve minutes as revised. Seconded by Theresa McCabe. All in Favor-Motion passed.

Public Comment: None

Departmental Reports:

Epidemiology-Robert Deener-Verbal Report
Nursing-Angie Gray - Verbal Report
Environmental-No Report
Health Promotion - Jennifer Schetrompf-Verbal Report
Administration/Financial-Bill Kearns-See Attached
Health Officer-Dr. McLaughlin-Verbal Report

Acceptance of Departmental Reports:

Motion to approve the verbal/written reports: Jane McCloud made a motion to accept the departmental reports.
Seconded by Dave Hansen. All in Favor-Motion passed.


Unfinished Business: None

New Business:

Engagement letter for preparation of Financial Report for FY 2021-Bill Kearns.
As a requirement for the FY 2021 audit, a formal financial report will need to be required. 3 letters were sent out. 1 denial, 1 proposal and the 3rd not responding. Theresa McCabe made a motion approve the request for authorization to allow Jeremy Drennen CPA to prepare the financial report for FY 2021. Seconded by Jane McCloud. All in Favor-Motion Passed.

Request of WV Division of Personnel for Max Annual Leave Carryover during State of Emergency. - Bill Kearns
Bill provided an update on staff not being able to take sufficient annual leave to ensure that maximum carryover amounts are not exceeded due to extensive needs of the Pandemic. Dave Hansen motion to request the WV Division of Personnel allow for an exemption of the maximum carryover amounts be waived during the State of Emergency/Pandemic. Allowable usage date to be determined by WVDOP. MaryJane Rinard seconded. All in Favor-Motion passed.

There being no further business for the Board to address, Jane McCloud made a motion to adjourn the meeting.
Seconded by MaryJane Rinard. All in Favor-Motion passed

 9/20/21

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Minutes of Berkeley-Morgan County Board of Health Special Meeting September 29, 2021

Attending Members: MaryJane Rinard, Lisa Poland, Teresa McCabe, Craig Hatcher, Jane McCloud, Dave Hansen

Staff: Bill Kearns, Kevin McLaughlin DO
Call to order at 1:30pm made by Lisa Poland

With there only being one item on the agenda, **Jane McCloud made a motion to go into Executive Session for reasons of Personnel with both Dr. McLaughlin and Bill Kearns being in attendance. Seconded by Teresa McCabe. All In Favor, Motion passed.**

Lisa Poland concluded the Executive Session. Let the record reflect that there were no decisions or motions made during this session.

New Business:

Bill Kearns requested to the Board of Health that for personal reasons, he has requested that effective immediately he would like to relinquish his responsibility of being the Human Resource Director which would include supervision of staff. He would remain the Director of the Health Department and will still provide for oversight.

Dave Hansen made a motion to grant the request of Bill Kearns effective immediately. Reluctantly, Teresa McCabe made a second to the Motion. All in Favor, Motion Passed.

After some discussion, **MaryJane Rinard made a motion to appoint Dr. McLaughlin for temporary/short term basis as the Human Resource Director as well as the total department head supervisor. Teresa McCabe seconded the motion. All in Favor, Motion Passed.**

With there being no further business, **MaryJane Rinard made a motion to adjourn the meeting. Seconded by Teresa McCabe. All in Favor, Motion Passed.**

Meeting concluded at 3:10pm

Q 10/18/21

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Berkeley-Morgan County Board of Health

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Minutes of Berkeley-Morgan County Board of Health Special Meeting October 4, 2021

Attending Members: MaryJane Rinard, Lisa Poland, Teresa McCabe, Craig Hatcher, Jane McCloud, Dave Hansen

Staff: Bill Kearns, Kevin McLaughlin DO, Angie Gray, Cara Harding

Guest: Jim Barnhart, Aaron Close, Kristen Tuttle

Call to order at 4pm made by Lisa Poland

Approval of Agenda: **Teresa McCabe made a motion to approve the agenda as presented. Second by Jane McCloud. All In Favor, Motion passed.**

New Business:

- Face mask policy for schools as previously approved by Dr. Kevin McLaughlin.
 - Dr. McLaughlin provided the Board of Health with a timeline of events that have happened since the initial policy was provided up to an including the recent opinion letter of the Attorney General, Patrick Morrissey (attached).
 - Bill Kearns read two (2) support letters of the masking policy from both Dr. Patrick K Murphy (Superintendent, Berkeley County Board of Education) as well as Kristen Tuttle (Superintendent, Morgan County Board of Education)

Jane McCloud made a motion to support as a recommendation to the Board of Educations, the mask wearing policy as previous outlined by Dr. Kevin McLaughlin. Teresa McCabe Seconded the Motion. All In Favor, Motion passed.

Teresa McCabe made a motion to go into Executive Session for reasons of personnel. Dave Hansen Seconded. All In Favor, Motion passed.

Lisa Poland concluded the Executive Session. Let the record reflect that there were no decisions or motions made during this session.

With there being no further business, **Teresa McCabe made a motion to adjourn to adjourn the meeting. Seconded by Jane McCoud. All in Favor, Motion passed.**

Meeting concluded at 5:10pm

 10/15/21

Berkeley-Morgan County Board of Health
Profit & Loss Budget vs. Actual
July through September 2021

	Jul - Sep 21
Ordinary Income/Expense	
Income	
400000 · Basic Public Health Services Re	
401000 · State Aid	174,727.19
401010 · County Commission - Berkeley	25,000.00
401011 · County Commission - Morgan	8,750.00
401020 · Municipallities Local -Berk	17,125.00
401040 · Interest	2,570.02
Total 400000 · Basic Public Health Services Re	228,172.21
401060 · Credit Card Fee	1,329.59
401150 · Medical Program Income	
402200 · BCCSP State Contract	0.00
402600 · Family Planning Private Copays	0.00
402610 · Family Planning Grant	352.10
402810 · Immunizations Medicare	385.54
402820 · Immunization Medicaid	384.00
402840 · Private Immunizations	
402845 · Travel Vaccines	0.00
402840 · Private Immunizations - Other	10,374.97
Total 402840 · Private Immunizations	10,374.97
402850 · Immunization State Contract	0.00
Total 401150 · Medical Program Income	11,496.61
401400 · Environmental Health	
401410 · Fees for Service	15,230.00
401411 · Fees for Permits	40,673.92
401420 · Environmental Health Contract	3,030.00
401400 · Environmental Health - Other	142.50
Total 401400 · Environmental Health	59,076.42
401450 · Threat Preparedness State Contr	35,060.00
401460 · COVID-19 Grant Income	170,037.99
401466 · Covid Imm Grant Sup	1,576.00
401471 · ELC /COVID19 Grant	60,900.00
403400 · Harm Reduction Income	
403405 · Harm Reduction State Grant	25,867.00
403400 · Harm Reduction Income - Other	6,471.00
Total 403400 · Harm Reduction Income	32,338.00
403460 · Berkeley QRT Grant	57,689.00
Total Income	657,675.82
Gross Profit	657,675.82
Expense	
500000 · Pooled Expenses	
507000 · Salaries Nurses-Berkeley	54,048.30
507001 · Salaries Nurses-Morgan	12,576.52
507010 · Clinical Health Services NP-B	550.00
507020 · Salaries Administration-Berk	115,665.23
507021 · Salaries Administration-Morg	9,076.10
507030 · Salaries Environmental-Berk	91,925.36
507031 · Salaries Envrionmental-Morg	7,923.52
507050 · Salary-Epidemiology	14,217.76
507060 · ELC Grant Salaries	100,609.49
Total 500000 · Pooled Expenses	406,592.28

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10/12/21

Accrual Basis

Berkeley-Morgan County Board of Health
Profit & Loss Budget vs. Actual
July through September 2021

	<u>Jul - Sep 21</u>
501000 · Basic Public Health Service Exp	
501100 · Office Management and Admin	
501040 · Contracted Personnel	
501047 · Administration	-918.00
501040 · Contracted Personnel - Other	10,351.50
Total 501040 · Contracted Personnel	9,433.50
501050 · FICA	30,955.36
501060 · Retirement Plan	26,545.22
501080 · Workers Compensation	0.00
501090 · PEIA	29,570.60
501092 · DENTAL INSURANCE	3,511.20
501094 · VISION INSURANCE	342.04
501150 · Auto Allowance	275.52
501155 · Automotive Supplies	51.03
501160 · Office Expense	7,643.29
501170 · Printing	0.00
501180 · Travel and Education	0.00
501190 · Telecommunications	1,516.95
501191 · W.A.N. CHARGE	1,965.14
501200 · Stamps	
501205 · Mailings for Lab Samples	742.85
501200 · Stamps - Other	770.22
Total 501200 · Stamps	1,513.07
501230 · Dues and Subscriptions	3,064.72
501240 · Accounting	5,856.50
501310 · Advertising Other	500.00
501360 · Software Maintenance	6,776.56
Total 501100 · Office Management and Admin	129,520.70
501300 · Facility Cost	
501390 · Utilities	2,614.44
501400 · Water Sewer Garbage	784.04
501470 · Maintenance Contract	1,555.00
501490 · Equipment Rental	78.94
Total 501300 · Facility Cost	5,032.42
Total 501000 · Basic Public Health Service Exp	134,553.12
501450 · QRT Berkeley	
501451 · QRT-Supplies	8,373.52
501452 · QRT-Car Rental	3,702.48
501455 · QRT-Cont Cost Cost	50,171.90
501456 · QRT-Salaries	1,205.00
501450 · QRT Berkeley - Other	0.00
Total 501450 · QRT Berkeley	63,452.90
501460 · QRT-Morgan	
501464 · QRT-Morgan-Salaries	0.00
Total 501460 · QRT-Morgan	0.00
501500 · Clinical Expenses	
501900 · Immunization	
501995 · Vaccine Supplies	66,073.83
504900 · Private Insurance Cont. Adj.	1,099.39
Total 501900 · Immunization	67,173.22
504420 · Auto Allowances	19.04
504430 · Medical Supplies	45.46

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Accrual Basis

Berkeley-Morgan County Board of Health
Profit & Loss Budget vs. Actual
July through September 2021

	<u>Jul - Sep 21</u>
504440 · Immunization grant Office Exp	0.00
504450 · Travel and Education	87.36
Total 501500 · Clinical Expenses	67,325.08
501600 · Insurance	
501620 · Malpractice Insurance	7,090.00
Total 501600 · Insurance	7,090.00
502400 · Environmental Health Expenses	
502450 · Auto Allowances	4,551.60
502460 · Supplies	672.25
502475 · Lab Cost-Water Testing	146.35
502480 · Travel and Education	0.00
502490 · Dues and Subscriptions	375.00
Total 502400 · Environmental Health Expenses	5,745.20
502500 · Threat Preparedness	
502550 · Sat Phone expense	0.00
502560 · Office Expense	1,400.07
502570 · Travel and Education	0.00
502500 · Threat Preparedness - Other	396.66
Total 502500 · Threat Preparedness	1,796.73
502525 · Covid-19 Expenses	10,371.33
502530 · COVID-19 - ELC Grant	6,481.59
510400 · Harm Reduction Program Expense	
510401 · HR-State Grant	14,425.98
510402 · HR-City	684.00
Total 510400 · Harm Reduction Program Expense	15,109.98
510403 · HR-County	0.00
6500 · Payroll Expenses	0.00
6999 · Uncategorized Expenses	134.99
Total Expense	718,653.20
Net Ordinary Income	-60,977.38
Net Income	-60,977.38

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Accrual Basis

Berkeley-Morgan County Board of Health
Profit & Loss Budget vs. Actual
July through September 2021

	Budget
Ordinary Income/Expense	
Income	
400000 · Basic Public Health Services Re	
401000 · State Aid	174,727.24
401010 · County Commission - Berkeley	25,000.00
401011 · County Commission - Morgan	8,750.00
401020 · Municipallities Local -Berk	17,125.00
401040 · Interest	3,000.00
Total 400000 · Basic Public Health Services Re	228,602.24
401060 · Credit Card Fee	450.00
401150 · Medical Program Income	
402200 · BCCSP State Contract	75.00
402600 · Family Planning Private Copays	150.00
402610 · Family Planning Grant	4,500.00
402810 · Immunizations Medicare	0.00
402820 · Immunization Medicaid	1,200.00
402840 · Private Immunizations	
402845 · Travel Vaccines	0.00
402840 · Private Immunizations - Other	45,000.00
Total 402840 · Private Immunizations	45,000.00
402850 · Immunization State Contract	23,000.00
Total 401150 · Medical Program Income	73,925.00
401400 · Environmental Health	
401410 · Fees for Service	13,800.00
401411 · Fees for Permits	43,023.00
401420 · Environmental Health Contract	2,550.00
401400 · Environmental Health - Other	
Total 401400 · Environmental Health	59,373.00
401450 · Threat Preparedness State Contr	140,238.00
401460 · COVID-19 Grant Income	
401466 · Covid Imm Grant Sup	
401471 · ELC /COVID19 Grant	140,212.50
403400 · Harm Reduction Income	
403405 · Harm Reduction State Grant	
403400 · Harm Reduction Income - Other	
Total 403400 · Harm Reduction Income	
403460 · Berkeley QRT Grant	57,499.97
Total Income	700,300.71
Gross Profit	700,300.71
Expense	
500000 · Pooled Expenses	
507000 · Salaries Nurses-Berkeley	64,021.97
507001 · Salaries Nurses-Morgan	12,658.50
507010 · Clinical Health Services NP-B	0.00
507020 · Salaries Administration-Berk	96,014.53
507021 · Salaries Administration-Morg	17,164.50
507030 · Salaries Environmental-Berk	90,298.25
507031 · Salaries Envrionmental-Morg	10,533.00
507050 · Salary-Epidemiology	13,987.50
507060 · ELC Grant Salaries	94,420.50
Total 500000 · Pooled Expenses	399,098.75

Berkeley-Morgan County Board of Health
Profit & Loss Budget vs. Actual
July through September 2021

	Budget
501000 · Basic Public Health Service Exp	
501100 · Office Management and Admin	
501040 · Contracted Personnel	
501047 · Administration	11,250.00
501040 · Contracted Personnel - Other	10,351.50
Total 501040 · Contracted Personnel	21,601.50
501050 · FICA	29,001.00
501060 · Retirement Plan	27,069.00
501080 · Workers Compensation	15,000.00
501090 · PEIA	29,631.00
501092 · DENTAL INSURANCE	4,431.00
501094 · VISION INSURANCE	426.00
501150 · Auto Allowance	750.00
501155 · Automotive Supplies	300.00
501160 · Office Expense	3,900.00
501170 · Printing	150.00
501180 · Travel and Education	900.00
501190 · Telecommunications	1,500.00
501191 · W.A.N. CHARGE	5,250.00
501200 · Stamps	
501205 · Mailings for Lab Samples	300.00
501200 · Stamps - Other	1,207.50
Total 501200 · Stamps	1,507.50
501230 · Dues and Subscriptions	3,000.00
501240 · Accounting	4,800.00
501310 · Advertising Other	
501360 · Software Maintenance	1,800.00
Total 501100 · Office Management and Admin	151,017.00
501300 · Facility Cost	
501390 · Utilities	4,500.00
501400 · Water Sewer Garbage	849.99
501470 · Maintenance Contract	1,699.97
501490 · Equipment Rental	105.00
Total 501300 · Facility Cost	7,154.96
Total 501000 · Basic Public Health Service Exp	158,171.96
501450 · QRT Berkeley	
501451 · QRT-Supplies	
501452 · QRT-Car Rental	
501455 · QRT-Cont Cost Cost	
501456 · QRT-Salaries	
501450 · QRT Berkeley - Other	63,453.00
Total 501450 · QRT Berkeley	63,453.00
501460 · QRT-Morgan	
501464 · QRT-Morgan-Salaries	
Total 501460 · QRT-Morgan	
501500 · Clinical Expenses	
501900 · Immunization	
501995 · Vaccine Supplies	33,250.03
504900 · Private Insurance Cont. Adj.	
Total 501900 · Immunization	33,250.03
504420 · Auto Allowances	300.00
504430 · Medical Supplies	437.53

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Accrual Basis

Berkeley-Morgan County Board of Health
Profit & Loss Budget vs. Actual
July through September 2021

	<u>Budget</u>
504440 · Immunization grant Office Exp	300.00
504450 · Travel and Education	
Total 501500 · Clinical Expenses	34,287.56
501600 · Insurance	
501620 · Malpractice Insurance	24,000.00
Total 501600 · Insurance	24,000.00
502400 · Environmental Health Expenses	
502450 · Auto Allowances	4,000.03
502460 · Supplies	300.00
502475 · Lab Cost-Water Testing	150.00
502480 · Travel and Education	150.00
502490 · Dues and Subscriptions	700.03
Total 502400 · Environmental Health Expenses	5,300.06
502500 · Threat Preparedness	
502550 · Sat Phone expense	0.00
502560 · Office Expense	2,400.00
502570 · Travel and Education	0.00
502500 · Threat Preparedness - Other	
Total 502500 · Threat Preparedness	2,400.00
502525 · Covid-19 Expenses	
502530 · COVID-19 - ELC Grant	43,750.03
510400 · Harm Reduction Program Expense	
510401 · HR-State Grant	
510402 · HR-City	4,999.97
Total 510400 · Harm Reduction Program Expense	4,999.97
510403 · HR-County	2,500.03
6500 · Payroll Expenses	
6999 · Uncategorized Expenses	
Total Expense	737,961.36
Net Ordinary Income	-37,660.65
Net Income	-37,660.65

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Accrual Basis

Berkeley-Morgan County Board of Health
Profit & Loss Budget vs. Actual
July through September 2021

	\$ Over Budget
Ordinary Income/Expense	
Income	
400000 · Basic Public Health Services Re	
401000 · State Aid	-0.05
401010 · County Commission - Berkeley	0.00
401011 · County Commission - Morgan	0.00
401020 · Municipallities Local -Berk	0.00
401040 · Interest	-429.98
Total 400000 · Basic Public Health Services Re	-430.03
401060 · Credit Card Fee	879.59
401150 · Medical Program Income	
402200 · BCCSP State Contract	-75.00
402600 · Family Planning Private Copays	-150.00
402610 · Family Planning Grant	-4,147.90
402810 · Immunizations Medicare	385.54
402820 · Immunization Medicaid	-816.00
402840 · Private Immunizations	
402845 · Travel Vaccines	0.00
402840 · Private Immunizations - Other	-34,625.03
Total 402840 · Private Immunizations	-34,625.03
402850 · Immunization State Contract	-23,000.00
Total 401150 · Medical Program Income	-62,428.39
401400 · Environmental Health	
401410 · Fees for Service	1,430.00
401411 · Fees for Permits	-2,349.08
401420 · Environmental Health Contract	480.00
401400 · Environmental Health - Other	
Total 401400 · Environmental Health	-296.58
401450 · Threat Preparedness State Contr	-105,178.00
401460 · COVID-19 Grant Income	
401466 · Covid Imm Grant Sup	
401471 · ELC /COVID19 Grant	-79,312.50
403400 · Harm Reduction Income	
403405 · Harm Reduction State Grant	
403400 · Harm Reduction Income - Other	
Total 403400 · Harm Reduction Income	
403460 · Berkeley QRT Grant	189.03
Total Income	-42,624.89
Gross Profit	-42,624.89
Expense	
500000 · Pooled Expenses	
507000 · Salaries Nurses-Berkeley	-9,973.67
507001 · Salaries Nurses-Morgan	-81.98
507010 · Clinical Health Services NP-B	550.00
507020 · Salaries Administration-Berk	19,650.70
507021 · Salaries Administration-Morg	-8,088.40
507030 · Salaries Environmental-Berk	1,627.11
507031 · Salaries Environmental-Morg	-2,609.48
507050 · Salary-Epidemiology	230.26
507060 · ELC Grant Salaries	6,188.99
Total 500000 · Pooled Expenses	7,493.53

Berkeley-Morgan County Board of Health
Profit & Loss Budget vs. Actual
July through September 2021

	\$ Over Budget
501000 · Basic Public Health Service Exp	
501100 · Office Management and Admin	
501040 · Contracted Personnel	
501047 · Administration	-12,168.00
501040 · Contracted Personnel - Other	0.00
Total 501040 · Contracted Personnel	-12,168.00
501050 · FICA	1,954.36
501060 · Retirement Plan	-523.78
501080 · Workers Compensation	-15,000.00
501090 · PEIA	-60.40
501092 · DENTAL INSURANCE	-919.80
501094 · VISION INSURANCE	-83.96
501150 · Auto Allowance	-474.48
501155 · Automotive Supplies	-248.97
501160 · Office Expense	3,743.29
501170 · Printing	-150.00
501180 · Travel and Education	-900.00
501190 · Telecommunications	16.95
501191 · W.A.N. CHARGE	-3,284.86
501200 · Stamps	
501205 · Mailings for Lab Samples	442.85
501200 · Stamps - Other	-437.28
Total 501200 · Stamps	5.57
501230 · Dues and Subscriptions	64.72
501240 · Accounting	1,056.50
501310 · Advertising Other	
501360 · Software Maintenance	4,976.56
Total 501100 · Office Management and Admin	-21,496.30
501300 · Facility Cost	
501390 · Utilities	-1,885.56
501400 · Water Sewer Garbage	-65.95
501470 · Maintenance Contract	-144.97
501490 · Equipment Rental	-26.06
Total 501300 · Facility Cost	-2,122.54
Total 501000 · Basic Public Health Service Exp	-23,618.84
501450 · QRT Berkeley	
501451 · QRT-Supplies	
501452 · QRT-Car Rental	
501455 · QRT-Cont Cost Cost	
501456 · QRT-Salaries	
501450 · QRT Berkeley - Other	-63,453.00
Total 501450 · QRT Berkeley	-63,453.00
Total 501450 · QRT Berkeley	-0.10
501460 · QRT-Morgan	
501464 · QRT-Morgan-Salaries	
Total 501460 · QRT-Morgan	
501500 · Clinical Expenses	
501900 · Immunization	
501995 · Vaccine Supplies	32,823.80
504900 · Private Insurance Cont. Adj.	
Total 501900 · Immunization	32,823.80
504420 · Auto Allowances	-280.96
504430 · Medical Supplies	-392.07

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Accrual Basis

Berkeley-Morgan County Board of Health
Profit & Loss Budget vs. Actual
July through September 2021

	<u>\$ Over Budget</u>
504440 · Immunization grant Office Exp	-300.00
504450 · Travel and Education	
Total 501500 · Clinical Expenses	<u>33,037.52</u>
501600 · Insurance	
501620 · Malpractice Insurance	-16,910.00
Total 501600 · Insurance	<u>-16,910.00</u>
502400 · Environmental Health Expenses	
502450 · Auto Allowances	551.57
502460 · Supplies	372.25
502475 · Lab Cost-Water Testing	-3.65
502480 · Travel and Education	-150.00
502490 · Dues and Subscriptions	-325.03
Total 502400 · Environmental Health Expenses	<u>445.14</u>
502500 · Threat Preparedness	
502550 · Sat Phone expense	0.00
502560 · Office Expense	-999.93
502570 · Travel and Education	0.00
502500 · Threat Preparedness - Other	
Total 502500 · Threat Preparedness	<u>-603.27</u>
502525 · Covid-19 Expenses	
502530 · COVID-19 - ELC Grant	-37,268.44
510400 · Harm Reduction Program Expense	
510401 · HR-State Grant	
510402 · HR-City	-4,315.97
Total 510400 · Harm Reduction Program Expense	<u>10,110.01</u>
510403 · HR-County	-2,500.03
6500 · Payroll Expenses	
6999 · Uncategorized Expenses	
Total Expense	<u>-19,308.16</u>
Net Ordinary Income	<u>-23,316.73</u>
Net Income	<u><u>-23,316.73</u></u>



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

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September 29, 2021

The Honorable Daniel M. James
Morgan County Prosecuting Attorney
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Berkeley Springs, WV 25411

The Honorable Catie Wilkes Delligatti
Berkeley County Prosecuting Attorney
380 West South Street, Suite 1100
Martinsburg, WV 25401

Dear Prosecutors James and Delligatti:

You have asked for an Opinion of the Attorney General about whether a letter from your local health officer constitutes a “rule” or an “order.” This Opinion is being issued pursuant to West Virginia Code Section 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.

In your request, you explain that the Morgan-Berkeley County Health Officer issued letters on August 9 and 11, 2021, which stated that the combined Morgan-Berkeley County Health Department “will require universal mask use in schools for all individuals” under certain circumstances. You indicated that the Officer believes these letters constitute an “order,” and that “he has the authority to enter such an order pursuant to W. Va. Code §§ 16-3-1 and 16-3-2.” You also note that members of the community have questioned whether the letters should be treated as a “rule” rather than an “order,” and thus subject to approval or disapproval by the county commission “pursuant to W. Va. Code § 16-2-11(3)(H).”

Your request thus turns on the legal distinction between a local health “rule,” subject to approval or disapproval by a county commission, and a local health “order.” Nevertheless, the circumstances you have laid out present a threshold issue about whether a local health officer has authority to issue rules or orders in the first place:

Does a local health officer have the authority to issue rules or orders unilaterally, or must rules and orders be issued by local boards of health?

We conclude that local health officials are not empowered to promulgate rules or orders on their own. Accordingly, we conclude that the August 9 and 11 letters are neither a rule nor an order because the Officer lacked authority to issue binding, unilateral directives.

Discussion

Your questions address two different types of local health directives. *First*, local health “rules” “that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation, and spread of disease” are “[a]dopt[ed] and promulgate[d]” by “[e]ach local board of health.” W. Va. Code § 16-2-11(b)(3)(A). Such rules must be “consistent with state public health laws and the rules of the West Virginia State Department of Health and Human Resources,” and must be “approved, disapproved, or amended and approved by the county commission” or other appointing entity that oversees the promulgating board. *Id.* § 16-2-11(b)(3)(A), (C)-(E). *Second*, a local health “order” is “made by [a local] board” pursuant to the “[p]owers of county and municipal boards of health to establish quarantine.” W. Va. Code § 16-3-2. Such a quarantine may be lifted by the state director of health if he or she finds it is not necessary. W. Va. Code §§ 16-1-2, 16-3-2.

Critically, both rules and orders are issued by a local *board of health*, not a local *health officer*. W. Va. Code §§ 16-2-11(b), 16-3-2. Indeed, a local health officer is charged with “*administer[ing]* . . . the rules and orders of the local board,” and may not even serve as a voting member of the board to which he or she reports. *Id.* § 16-2-13(a), (b)(1) (emphasis added). More generally, none of the powers that the Code provides “may be delegated” to a “local health officer” include authorizing these officers to issue their own “rules” or “orders.” *See id.*

The distinction between the local board and executive officer reflects the “general rule inherent in the American constitutional system” of separating legislative, executive, and judicial powers. *State ex rel. State Bldg. Comm’n v. Bailey*, 151 W. Va. 79, 85, 150 S.E.2d 449, 453 (1966). “Rule-making” is a legislative power that only “comes under the executive department’s bailiwick upon the delegation” of such power from the corresponding legislative body. *State ex rel. Meadows v. Hechler*, 195 W. Va. 11, 15, 462 S.E.2d 586, 590 (1995). And because local boards of health are not authorized to make such delegations, it would be inconsistent with this framework to allow “the executive officer” tasked with “*administer[ing]* . . . rules and orders,” W. Va. Code § 16-2-13(a), to also enact new rules and orders unilaterally. Further, the Legislature has recently *strengthened* this distinction by increasing oversight of boards when exercising their rulemaking power. *See* 2021 W. Va. Acts c. 213 (enacting requirement that local board of health rules be approved by municipal or county governing bodies). This new system of legislative oversight mirrors protections that have long existed at the state level to ensure accountability for agencies tasked with delegated rulemaking powers. *See* W. Va. Code § 29A-3-12 (providing for legislative approval of agency regulations). It is unlikely that the Legislature would have intended the county-level system to include a “backdoor” through which a board’s executive officer could implement rules independent from this oversight.

Because nothing in the August 9 or 11 letters suggests that they were issued by the Morgan-Berkeley Board of Health, we therefore conclude that they do not satisfy the statutory requirements to be either a rule or an order. We note that this conclusion does not depend on the subject or substance of the letters themselves, but was reached solely because of the identity of the issuer. Nor does this Opinion address whether a directive issued by a local board of health addressing this subject would constitute a rule or order. Evaluating such a directive would depend on several case-specific factors, including whether the board had declared a “quarantine” pursuant to Section 16-3-2.

More broadly, we are not aware of any other statute that would give these letters binding legal effect. Although the Governor’s Executive Order 22-20 previously gave your local health department the authority to “establish and enforce” certain protocols related to the COVID-19 pandemic, this Order was terminated on April 20, 2021. *See* State of West Virginia Executive Department, Executive Order 12-21 at 2-3 (Apr. 19, 2021), *available at* <https://governor.wv.gov/Documents/2021%20Executive%20Orders/EO-12-21-April-19-2021.pdf>. Similarly, it is true that a local health officer has power in some circumstances to “implement the prevention and control methods specified by the protocols in the West Virginia Reportable Diseases Protocol Manual . . . or developed in consultation with the Commissioner [of the Bureau for Public Health of the West Virginia Department of Health and Human Resources].” W. Va. Code St. R. §§ 64-7-2.10, 16.4.a. The facts you describe, however, do not suggest that this power has been invoked here: The local health officer’s letters did not refer to any protocol in that manual, nor did they allude to any consultations between the local health officer and the Commissioner of the Bureau for Public Health.

The COVID-19 pandemic has created numerous challenges for public officials at all levels of government, especially those tasked with keeping our children safe. It is important to take reasonable precautions in this regard, but even well-intentioned policies must be issued in lawful ways. Supervisory oversight and other legal constraints preventing unilateral bureaucratic action maintain political accountability—a particularly important consideration when enacting policies during unusual and fast-changing circumstances.

Sincerely,



Patrick Morrissey
Attorney General

Lindsay See
Solicitor General

cc: Anthony Delligatti, Berkeley County Legal Director