



JANUARY 2009

WEST VIRGINIA INFORMATIONAL LETTER

NO. 165

TO: Workers' Compensation Insurance Companies and Insurance Agents Doing Business in West Virginia, West Virginia Governmental Bodies and other Interested Parties

RE: Definition of "Governmental Bodies" as used in W. Va. Code §23-2C-15(b).

West Virginia's workers' compensation market was privatized pursuant to the passage of Senate Bill 1004, effective January 29, 2005. This legislation terminated the former West Virginia Workers' Compensation Commission ("WCC"). Pursuant to Senate Bill 1004, a mutual insurance company, the West Virginia Employer's Mutual Insurance Company, d/b/a BrickStreet Insurance ("WVEMIC") was formed. WVEMIC began doing business on January 1, 2006, and until July 1, 2008, was the sole workers' compensation insurer in West Virginia. The regulatory functions of the former WCC transferred to the WV Offices of the Insurance Commissioner ("OIC") upon termination of the WCC.

On July 1, 2008, West Virginia's workers' compensation insurance market opened to all licensed carriers authorized to sell workers' compensation insurance. However, pursuant to West Virginia Code Section 23-2C-15(b),¹ all "governmental bodies" are required to obtain their insurance from WVEMIC until July 1, 2012. This informational letter is intended to provide clarification as to what entities are "governmental bodies" that are required to maintain workers' compensation insurance with WVEMIC until July 1, 2012.

The OIC interprets "governmental bodies" to include the State of West Virginia and all of its departments, boards, agencies, institutions, spending units and subdivisions. It is clear the most significant challenge in interpreting this language is defining "subdivisions". The OIC believes that this term, for purposes of interpreting this code section, should be defined as follows:

¹ This subsection provides in relevant part as follows:

Effective the first day of July, two thousand eight, an employer may elect to: (1) Continue to purchase workers' compensation insurance from the company [WVEMIC]; (2) purchase workers' compensation insurance from another private carrier licensed and otherwise authorized to transact workers' compensation insurance in this State; or (3) self-insure its obligations if it satisfies all requirements of this code to so self-insure and is permitted to do so: ***Provided, That all state and local governmental bodies, including, but not limited to, all counties and municipalities and their subdivisions and including all boards, colleges, universities and schools, shall continue to purchase workers' compensation insurance from the company through the thirtieth day of June, two thousand twelve.***

[Emphasis added].

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Any county, county commission, municipality and county board of education; any separate corporation or instrumentality controlled by one or more counties or municipalities, as permitted by law; any public body charged by law with the performance of a government function; any combined city-county health department created pursuant to West Virginia Code Section 16-2-1 *et seq.*; public service districts; any other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by any public body and authorized by law to perform a government function.

Some specific types of entities that fall within the scope of this definition of “subdivision” are:

- Boards of education;
- Colleges, universities and schools which are controlled by the State or one of its subdivisions (i.e., “public” institutions of learning);
- Boards established by a city or county, such as a transportation board or board of parks or recreation.

Some specific types of entities that do not fall within the scope of this definition would be:

- Any non-profit or for-profit company or organization that is not controlled by the State or one of its subdivisions, but merely receives funding from the State or one of its political subdivisions;
- Any university, college or school that is privately controlled (i.e., “private” institutions of learning).

Insurance carriers and agents authorized to sell workers’ compensation coverage need to be aware of the restrictions imposed by West Virginia Code Section 23-2C-15(b) regarding governmental bodies. If companies other than WVEMIC sell workers’ compensation insurance to governmental bodies prior to July 1, 2012, it will be considered unlawful. Likewise, employers that are governmental bodies should also be aware that they may only purchase workers’ compensation insurance from WVEMIC until July 1, 2012.

The OIC recognizes that there are a number of other areas in West Virginia’s laws that require an analysis as to whether an entity is a governmental entity or body. The OIC emphasizes that this informational letter is solely for the purpose of clarifying the scope of the language in West Virginia Code Section 23-2C-15(b), and does not apply to any of these other areas of law.

The OIC encourages anyone with a question about whether an entity is a “governmental body” under West Virginia Code Section 23-2C-15(b) to contact the OIC’s legal division. Specifically, questions regarding this informational letter should be referred to Ryan M. Sims, Associate Counsel, at ryan.sims@wvinsurance.gov or 304.558.6279, ext. 1139.

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Insurance Commissioner

