



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

(304) 558-2021
Fax (304) 558-0140

September 19, 2022

Honorable Rebecca L. Miller
Hampshire County Prosecuting Attorney
50 South High Street
Romney, WV 26757

Dear Ms. Miller:

You have asked for an Opinion of the Attorney General on whether Hampshire County may charge emergency ambulance service fees to residents of a public housing project operated by a public housing authority. This Opinion is being issued pursuant to West Virginia Code § 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 depends solely on the factual assertions set forth in your correspondence with the Office of the Attorney General.

Your request explains that the Hampshire County Commission passed an Emergency Ambulance Service Fee Ordinance (“Ordinance”) in April 2018. Generally, the Ordinance applies to all of Hampshire County at a rate of \$100 per year per residential unit. But the Ordinance includes some exemptions. As relevant here, the Ordinance specifically exempts public housing agencies from the fee—instead, the fee applies to any “occupants” of public housing. The Ordinance explains that Hampshire County included these occupants because they are potential users of emergency ambulance services. Thus, the county intends to impose the emergency ambulance service fee on the residents of Valley View, a public housing project operated by the Romney Public Housing Authority.

Your request raises the following legal question:

Under West Virginia Code § 7-15-17, is an emergency ambulance service fee applicable to the residents of public housing units operated by a public housing authority?

We conclude that emergency ambulance service fees may apply to the residents of public housing units. As W. Va. Code § 7-15-17 contemplates, the Ordinance imposes a user fee. Its text appropriately encompasses people who live in a public housing project. Cases confirm the same. And nothing in the statutes defining the powers and privileges of public housing authorities says otherwise.

DISCUSSION

To begin, W. Va. Code § 7-15-2(e) provides that the Emergency Ambulance Service Act of 1975 “shall be liberally construed” to achieve its purpose of providing emergency ambulance services. West Virginia Code § 7-15-18 likewise says that “provisions of this article shall be construed to accomplish its purpose.” “[I]n the absence of language in the statute showing a contrary intent on the part of the legislature,” “the word ‘shall’ ... should be afforded a mandatory connotation.” *Bd. of Educ. of Cnty. of Grant v. Townshend*, 187 W. Va. 249, 251, 418 S.E.2d 359, 361 (1992). So we start with an understanding that we must apply the broadest justifiable understanding of the statute that would advance its purpose to provide emergency ambulance services through the use of “public money.” W. Va. Code § 7-15-2(d).

With this construction in mind, we “look to the relevant and controlling language” of the statute. *State ex rel. Dep’t of Health and Hum. Res., Child Support Enf’t Div. v. Baker*, 210 W. Va. 213, 216, 557 S.E.2d 267, 270 (2001).

West Virginia Code § 7-15-17 empowers a county commission to “impose upon and collect from the users of emergency ambulance service within the county a special service fee.” (emphasis added). Thus, this fee is by its express terms a user fee. It is not a fee or tax on property itself, but rather on persons who use the emergency ambulance services. *See* 56 W. Va. Op. Att’y Gen. 308 (1976) (“[I]t is clear from the language of the Act itself that the Legislature did not intend the ‘special emergency ambulance service fee’ to be a general tax to be imposed upon property owners, but rather intended it to be a ‘special service fee’ to be imposed upon the users of an essential service.”).

No language in the statute imposes restrictions on a county’s ability to collect this fee based on income, housing type, or any other factor present here. The statute requires only that the county impose fees on “users” of emergency ambulance services. *Id.*; *see also Citizens for Fair Taxation v. Clay Cnty. Comm’n*, 192 W. Va. 408, 411, 452 S.E.2d 724, 728 (1994) (holding that a per-household flat fee appropriately tied “the burden of the fee to the usage of the service in a sufficiently reasonable way” and was not an ad valorem property tax).

Thus, the Ordinance follows the statute by imposing the emergency ambulance service fee on the “occupants” of public housing as “potential users of” such services. The Ordinance does not impose a fee on the housing authority itself. Because the residents’ status as potential users of emergency ambulance services is certain, the statute’s “plain meaning ... answers the interpretative question.” *State ex rel. Roy Allen S. v. Stone*, 196 W. Va. 624, 630, 474 S.E.2d 554, 560 (1996) (citation omitted). The “clear and unambiguous” text of W. Va. Code § 7-15-17 empowers a county commission to collect a fee from users of emergency ambulance services,

and the statute must “be given full force and effect.” Syl. pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951).

This outcome aligns with the Supreme Court of Appeals’ view. The Supreme Court has explained that even residents who do not own the property remain “users of the emergency ambulance service” under W. Va. Code § 7-15-17. *Randy Waugh/Waugh’s Mobile Home Park v. Morgan Cnty. Emergency Med. Servs. Bd., Inc.*, 236 W. Va. 468, 479, 781 S.E.2d 379, 390 (2015). And in *Clay County Citizens for Fair Taxation*, the Supreme Court upheld an emergency ambulance service fee that applied to “any bona fide owner or occupant of a living unit.” 192 W. Va. at 409, 452 S.E.2d at 725 (emphasis added). There, the ordinance defined a living unit to include “taxpayers in any place of residence,” including “residential homes, mobile homes, apartments, personal care facilities, nursing homes and correctional facilities.” *Id.* The Court explained that the fee requirement must only be “reasonably related to [the] use of the service,” and extending the fee to all residents met that requirement. *Id.* at 411, 452 S.E.2d at 727. As in that case, the Ordinance here is specifically collected from the users of the services and is thus reasonably related to the use of the service.

Finally, the State Housing Law’s provisions on housing authorities do not change the outcome. West Virginia Code § 16-15-14(a) exempts the housing authority itself and the “property of an authority” from taxes and fees. But the “public corporate bodies” constituting the housing authorities, W. Va. Code § 16-15-2, are distinct from the residents that occupy the homes that the authorities may provide. *See also* W. Va. Code R. § 110-3-35 (explaining that “[t]he property, bonds, notes, debentures and other evidences of indebtedness of a housing authority” are exempt from taxation, but not exempting occupants or residents from taxation). We see nothing in W. Va. Code § 16-15-14(a)—or any other statute, for that matter—that suggests the Legislature intended to exempt the residents of the authorities from all taxation and fees. Indeed, as the examples cited in your letter reflect, that understanding would be a substantial break from present practice; residents currently pay similar service fees. Because we should not “arbitrarily read into a statute that which it does not say,” we cannot assume that the residents of a housing authority are exempt from taxes and fees, including the emergency ambulance service fee. *State v. Butler*, 239 W. Va. 168, 178, 799 S.E.2d 718, 728 (2017).

Here again, precedents confirm our reading of the statute. The Court has explained that public housing projects do “not belong to the tenants therein” but are instead “held by the housing authority for a public purpose.” *Chapman v. Huntington, W. Va. Hous. Auth.*, 121 W. Va. 319, ___, 3 S.E.2d 502, 516 (1939). So, these projects are “public property,” and they “should be exempt from taxation.” *Id.* It is this public property that is tax- and fee-exempt. *See id.* But, as we have already explained, the emergency ambulance service fee is not a fee or tax against the property itself. Cf. 56 W. Va. Op. Att’y Gen. at 308 (“There is nothing in this language to suggest that the Legislature intended such service fees to be imposed only on property owners.”). So none of the considerations that justify the State’s Housing Act tax-exemption provision would apply here.

Honorable Rebecca L. Miller
September 19, 2022
Page 4

In short, an emergency ambulance service fee can be applied to the residents of public housing units operated by a public housing authority.

Sincerely,



Patrick Morrissey
West Virginia Attorney General

Michael R. Williams
Senior Deputy Solicitor General

Caleb A. Seckman
Assistant Solicitor General