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July 18, 2018

Raymond K. LaMora III
Tucker County Prosecuting Attorney
211 First Street, Suite 207
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Dear Prosecutor LaMora:

You have asked for an Opinion of the Attorney General concerning the Tucker County Commission's ability to collect unpaid special emergency ambulance service fees. 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 is based solely on the factual assertions in your correspondence with the Office of the Attorney General.

In your letter, you explain that the Tucker County Commission ("Commission") exercised its authority under West Virginia Code § 7-15-17 by issuing an ordinance that requires county property owners and businesses to pay an annual special ambulance service fee. The ordinance provides that the Commission may collect unpaid, overdue fees by filing a civil action or referring the matter to a collections agency. You included a copy of the ordinance with your letter, which represents that it went into effect on November 8, 2017.

Your letter raises the following legal question:

Does a county commission have authority to collect overdue special emergency ambulance service fees pursuant to an ordinance that allows the commission to initiate a civil action or use a collections agency?

We conclude that both options are acceptable means by which a county commission may exercise its statutory authority to collect special emergency ambulance service fees from county residents.

Discussion

In 1975, the Legislature enacted the Emergency Ambulance Service Act to help expand emergency ambulance coverage across West Virginia. W. Va. Code § 7-15-2; *see also Randy Waugh/Waugh's Mobile Home Park v. Morgan Cty. Emergency Med. Servs. Bd., Inc.*, 236 W. Va. 468, 475, 781 S.E.2d 379, 386 (2015). A central provision of this Act imbues county commissions with the power—and often the obligation—to create an emergency ambulance authority. W. Va. Code § 7-15-4. In turn, West Virginia Code § 7-15-17 provides that a county commission may, through ordinance, “impose upon and collect from the users of the emergency ambulance service within the county” a “special emergency service fee.” *See also Clay Cty. Citizens for Fair Taxation v. Clay Cty. Comm’n*, 192 W. Va. 408, 409, 452 S.E.2d 724, 725 (1994) (upholding imposition of an emergency ambulance service fee upon each household within a county); *City of Huntington v. Bacon*, 196 W. Va. 457, 468-69, 473 S.E.2d 743, 754-55 (1996) (reaffirming *Clay*).

The ordinance at issue here does just that. Through the ordinance, the Commission imposed an annual special emergency ambulance service fee upon all property owners and businesses within Tucker County. This \$50 fee is due by September 1 each year beginning September 1, 2018. The ordinance further provides that the Commission may initiate actions to collect any fees that remain outstanding on or after May 1 the year after the fees come due, together with late fees and interest. Specifically, the Commission may either engage a collections agency or pursue a civil action in its effort to collect overdue fees.

Turning first to the civil action option, there is no doubt that this is a permissible, legal method to collect delinquent special emergency ambulance service fees. In *Randy Waugh*, the Supreme Court of Appeals held that the Morgan County Commission had authority to delegate power to collect special emergency ambulance service fees to its ambulance authority, and that the ambulance authority could exercise this power by bringing a civil action. 236 W. Va. at Syl. Pt. 6, 781 S.E.2d at 381. Because county commissions have authority to delegate fee collection to other entities, it necessarily follows that they possess that power in their own right. Indeed, our high court emphasized that county commissions have statutory authority to pass ordinances that “provide[] for the imposition *and collection* of emergency ambulance service fees.” *Id.* at 475, 781 S.E.2d at 386 (emphasis added). This conclusion is also consistent with a pre-*Randy Waugh* opinion from this Office, which reasoned that an ambulance authority lacks freestanding authority to bring a civil action to collect unpaid emergency ambulance fees, but expressly left open the question “whether a county commission [may] delegate *its* statutory power” to do so. Opinion of Attorney General Regarding Collection of Unpaid Emergency Ambulance Service Fees, 2013 WL 5984531, at *3 (W. Va. A.G. Nov. 8, 2013) (emphasis added).

Although use of a collections agency to collect ambulance service fees has not been tested in court, we are confident that this approach is also a valid exercise of the Commission’s statutory authority. First, the Commission established this option through ordinance, satisfying the threshold requirement in West Virginia Code § 7-15-17 that a county commission may “collect” ambulance service fees “by ordinance” only. Nothing in Section 7-15-17 or other

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relevant statutes constrains the *manner* by which commissions may collect unpaid fees. Further, it is well-established that a county commission possesses “such powers as are expressly conferred by the Constitution and the legislature, together with such as are reasonably and necessarily implied in the full and proper exercise of the powers so expressly given.” Syl. Pt. 4, *State ex rel. W. Virginia Parkways Auth. v. Barr*, 228 W. Va. 27, 716 S.E.2d 689 (2011). We see no reason why resort to the courts would be a valid avenue to exercise a county commission’s express authority under Section 7-15-17 to collect ambulance service fees, but engaging a collections agency would not. Both remedies can be fairly described as “reasonably and necessarily implied in the full and proper exercise of” the Commission’s express power. *Id.*; *see also* Syl. Pt. 1, *State ex rel. State Line Sparkler of WV, Ltd. v. Teach*, 187 W. Va. 271, 418 S.E.2d 585 (1992).

Further, the Emergency Ambulance Service Act is to be “liberally construed” to accomplish its purpose of “promot[ing] the health and welfare of the citizens and residents of this State.” W. Va. Code § 7-15-2(b), (e), (d); *see also id.* § 7-15-18 (providing that “[t]he provisions of this article shall be liberally construed to accomplish its purpose”). An interpretation of Section 7-15-17 that unduly limits the means by which the Commission may exercise its authority to “collect” ambulance service fees would run against this principle and frustrate the Legislature’s goal of empowering county commissions to establish enforceable systems to fund county emergency ambulance services. Accordingly, we conclude that the ordinance allowing the Commission to refer unpaid fees to a collections agency is a valid exercise of its power under Section 7-15-17.

Finally, although additional questions that may arise from the collections process itself are outside the scope of your request, we note that the ordinance must be applied consistent with other applicable laws. For example, because all proceeds from the collected fees must be deposited into a special fund and used for specific purposes only, *see* West Virginia Code § 7-15-17; *Randy Waugh*, 236 W. Va. at 476, 781 S.E.2d at 387, any fee arrangement between the Commission and a collections agency likely could not include sharing portions of those fees. We also strongly urge the Commission to ensure that any collections agency it may choose to employ is properly vetted and complies with the license and bonding requirements of West Virginia Code § 47-16-4.

Sincerely,



Patrick Morrissey
Attorney General

Lindsay See
Solicitor General

Gordon L. Mowen, II
Assistant Attorney General