



State of West Virginia  
Office of the Attorney General

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May 27, 2015

Honorable Jason A. Wharton  
Prosecuting Attorney  
Wood County Prosecuting Attorney's Office  
317 Market Street  
Parkersburg, WV 26101

Dear Prosecutor Wharton:

You have asked for an Opinion of the Attorney General that addresses the imposition of a county fire service fee under West Virginia Code § 7-17-12 and the significance of the petition required under that statute. 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 set forth in your correspondence with the Office of the Attorney General.

You explain in your letter that the Wood County Commission (the "Commission") and the Wood County Fire Board (the "Board") disagree over the scope of the Commission's authority to impose a county fire service fee under Section 7-17-12. The statute requires that the Commission receive a petition signed by 10% of qualified voters "directing" the imposition of a reasonable service fee "before" the Commission "can impose" such a fee. According to your letter, the Commission argues that the required petition is a condition precedent to its exercise of authority to adopt an ordinance imposing a reasonable service fee, but that it has the discretion to refuse such a petition. You further state that the Board disagrees and contends that the Commission is obligated to impose the fee upon receipt of a petition that satisfies the statutory requirements.

Your letter raises the following legal question:

*Does West Virginia Code § 7-17-12 mandate that a county commission impose an ordinance setting forth a reasonable fire service fee upon receiving a petition signed by 10% of qualified voters that directs the commission to impose such a fee?*

We conclude that the Commission—and not the Board—is correct. West Virginia Code § 7-17-12 provides that “[e]very county commission which provides fire protection services has *plenary* power and authority to provide by ordinance for the continuance or improvement of such service, to make regulations with respect thereto and to impose by ordinance, upon the users of such services, reasonable fire service rates, fees and charges to be collected in the manner specified in the ordinance.” W. Va. Code § 7-17-12 (emphasis added). “However,” the statute continues, “before a county commission can impose by ordinance, upon the users of such service, a reasonable fire service fee, ten percent of the qualified voters shall present a petition duly signed by them in their own handwriting, and filed with the clerk of the county commission directing that the county commission impose such a fee.” *Id.* The statute further provides that a timely objection by “thirty percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the clerk of the county commission,” *id.*, will delay the effectiveness of any such fee “until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary, general or special election as the county commission directs,” *id.* As we explain below, we believe that the plain language of this statute makes clear that the required petition of 10% of qualified voters is a *non-binding* condition precedent to the Commission’s exercise of its discretionary authority to impose a reasonable fire fee.

Read together, numerous provisions in the statute indicate that the petition in question is merely a non-binding condition precedent to the Commission’s exercise of its own discretion. *First*, the statute grants the Commission the “plenary power and authority” to impose a reasonable fire service fee. As the West Virginia Supreme Court of Appeals has noted, the word “plenary” means “[f]ull, entire, complete, absolute, perfect, unqualified.” *State ex rel. Clark v. Blue Cross Blue Shield of W. Virginia, Inc.*, 203 W. Va. 690, 701, 510 S.E.2d 764, 775 (1998) (quoting Black’s Law Dictionary 1154 (6th ed. 1990)). It would be inconsistent with the settled meaning of “plenary power” to bind the Commission to follow the dictate of a group constituting only 10% of qualified voters. *Second*, the law plainly states that the petition must be filed “before a county commission *can* impose” the fee. W. Va. Code § 7-17-12 (emphasis added). The word “can”—as opposed to “shall”—suggests discretion on the part of the Commission. *Third*, there is nothing in the statute that alters the ordinary meaning of the word “petition”—a “formal written *request* presented to a court or other official body”—to make it binding on the Commission. Black’s Law Dictionary 1329 (10th ed. 2014) (emphasis added). You explain that the Board focuses on the phrase “directing that the county commission impose such a fee,” but we believe that phrase simply describes the substance of the request that the petition must make to satisfy the statute. *Fourth*, the provision that allows an opposing petition signed by 30% of qualified voters to force a referendum vote on any new or amended fire service fee, *see* W. Va.

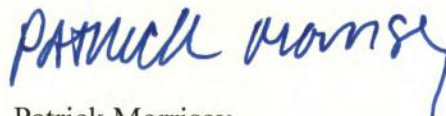
Hon. Jason A. Wharton  
May 27, 2015  
Page 3

Code § 7-17-12, suggests that the Legislature's overriding purpose was to protect county residents from a fee that they do not support. In light of that purpose, it would be strange to bind the Commission to impose a fee based on a petition signed by only 10% of qualified voters.

Case law supports this plain reading of the statute. In *Putnam County Fire Service Board v. Kelly*, the West Virginia Supreme Court of Appeals upheld the constitutionality of West Virginia Code § 7-17-12, and in doing so noted that the Putnam County Commission had been presented with a petition "*asking* the Commission to impose an ordinance creating a fire service fee in the county," and that the Commission then "*adopted*" the petition. 192 W. Va. 37, 38-39, 449 S.E.2d 508 (1994) (emphasis added). Similarly, the Supreme Court of Appeals held in *Scott v. Marion County Commission* that "a petition to *initiate* a fire service fee for the benefit of county volunteer fire departments required the signatures of ten percent of the registered voters only in the area that would pay the fee and receive the benefit of the service." Syl., 180 W. Va. 483, 377 S.E.2d 476 (1988) (emphasis added). The word "initiate," which is commonly defined as "to cause the beginning of (something)," again suggests that the Court understood the required petition as simply the start of the procedural process. *Initiate*, Merriam-Webster Online, <http://www.merriam-webster.com/dictionary/initiate> (last visited May 26, 2015). Finally, the U.S. District Court for the Northern District of West Virginia has explained that Section 7-17-12 "requires that 10% of the qualified voters must petition for the imposition of the fee before the ordinance *can be presented*." *McMahon v. Co. Com'n of Morgan Co.*, No. 91-30-M, 1992 WL 691152, at \*3 (N.D. W. Va. 1992). The word "presented" suggests that a county commission retains discretion over whether to adopt the ordinance.

In sum, we conclude that the petition at issue is merely a condition precedent to the Commission's otherwise plenary power and authority to enact an ordinance imposing a reasonable service fee. Under West Virginia Code § 7-17-12, the Commission may only enact an ordinance imposing a reasonable fire service fee upon the receipt of a petition signed by 10% of qualified voters, but receipt of such a petition does not mandate that the Commission adopt the requested fee.

Sincerely,



Patrick Morrisey  
Attorney General

Elbert Lin  
Solicitor General

Julie Warren  
Assistant Attorney General