

PATRICK MORRISEY  
ATTORNEY GENERAL

July 12, 2013

The Honorable Lucas J. See  
Prosecuting Attorney  
Hardy County Prosecuting Attorney's Office  
204 Washington St., Room 104  
Moorefield, WV 26836

Dear Prosecutor See,

You have asked for an Opinion of the Attorney General regarding a county commission's duty under West Virginia Code § 7-15-4 to provide emergency ambulance services within the County. 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." In your July 1, 2013 letter to the Office of the Attorney General, you state that the Opinion affects "immediate concerns" in Hardy County, but provide no other factual context.

Your letter raises a number of legal questions, each addressed in turn below:

*(1) Is a county commission required by law to provide ambulance service within its county? (2) To what extent may the burden of operational funding for ambulance service be applied to the citizens of that county?*

***Question One: Is a county commission required by law to provide ambulance service within its county?***

West Virginia Code § 7-15-4 expressly requires a county commission to provide emergency ambulance services within its respective county. Article 15 of Chapter 7 of the West Virginia Code codifies the Emergency Ambulance Service Act of 1975. That Act recognized that: (1) "a significant part of the population of this state does not have adequate emergency ambulance service"; (2) "the establishment and maintenance of adequate emergency ambulance systems for the entire state is necessary to promote the health and welfare of the citizens and residents of this state"; (3) "emergency ambulance service is not likely to become available to all the citizens and residents of this state unless specific requirements therefor are provided by law";

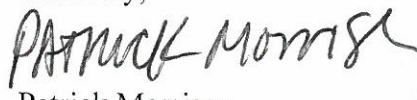
and (4) providing emergency ambulance services is “a public purpose and a responsibility of government.” W. Va. Code § 7-15-2. Accordingly, county commissions are tasked with “caus[ing] emergency ambulance service to be made available to all the residents of the county where such service is not otherwise available[.]” *Id.* § 7-15-4.

The duty of county commissions to make emergency ambulance services available, however, is subject to two limits. *First*, the county commission has no duty to provide emergency ambulance services unless it makes “an affirmative determination” that funds are available for the service. *Id.* A county commission shall make such a determination by including “a projected expenditure for such [emergency ambulance services] in the current levy estimate.” *Id.* *Second*, even when a county commission has projected the availability of funds for emergency ambulance services, the county commission “shall not be under a duty to cause such service to be provided beyond a level commensurate with the amount of funds *actually available* for such purpose.” *Id.* (emphasis added).

***Question Two: To what extent may the burden of operational funding for ambulance service be applied to the citizens of a county?***

State law clearly grants county commissions the authority to collect money from residents to pay for emergency ambulance services. West Virginia Code § 7-15-17 authorizes county commissions to impose “by ordinance” a “special emergency ambulance service fee” on their residents to pay for ambulance services. *Id.* § 7-15-17. These funds must “be deposited in a special fund and used only to pay reasonable and necessary expenses actually incurred and the cost of buildings and equipment used in providing emergency ambulance services to the residents of the county.” *Id.*; see also *Clay Cnty. Citizens for Fair Taxation v. Clay Cnty. Comm’n*, 192 W. Va. 408, 452 S.E.2d 724 (1994) (rejecting a constitutional challenge to W. Va. Code § 7-15-17). Moreover, West Virginia Code § 11-8-6b authorizes county commissions to lay levies for “general county current expenses,” W. Va. Code § 11-8-6b, and this Office has previously concluded that “[e]xpenditures for emergency ambulance service are made a proper item of county expense by Code 7-15-4,” 59 W. Va. Op. Att’y Gen. 161 (1982). We have no reason to revisit that conclusion today, though we note that the Supreme Court of Appeals has reserved judgment as to whether the special emergency ambulance service fee constitutes “a tax or fee.” *City of Huntington v. Bacon*, 196 W. Va. 457, 468 n.10, 473 S.E.2d 743, 754 n.10 (1996).

Sincerely,



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