



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

(304) 558-2021
Fax (304) 558-0410

November 8, 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 whether an emergency ambulance authority can bring suit to collect unpaid 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." Your September 25, 2013 letter to the Office of the Attorney General raises the following legal question:

May an emergency ambulance authority created under the provisions of West Virginia Code § 7-15-4 bring suit in Magistrate Court to collect unpaid emergency ambulance fees imposed under the provisions of West Virginia Code § 7-15-17?

We conclude that an emergency ambulance authority does not have the statutory power to collect special emergency ambulance fees imposed under West Virginia Code § 7-15-17. Created by county commissions pursuant to statute, emergency ambulance authorities have specific enumerated powers set forth in West Virginia Code § 7-15-10. Those powers include the ability to: "provide emergency ambulance service"; "enter into contracts and agreements"; "sue and be sued"; and "do any and all things necessary or convenient to carry out the powers given in this article." *Id.*

Thirty years ago, the Office of Attorney General determined that an emergency ambulance authority may, pursuant to West Virginia Code § 7-15-10, "impose and collect fees

and charges upon users of their services for services rendered.” 59 W. Va. Op. Att’y Gen. 161 (1982). Specifically, that earlier Opinion found that “the imposition of a charge upon the basis of a minimum fee per transport, mileage charge, etc., for services actually rendered, would appear to be in the [sic] conformity with the general powers of the authority set forth in Code 7-15-10.” *Id.* The Office reasoned that charging for *actual services provided* falls within an emergency ambulance authority’s express statutory power to “do any and all things necessary” to carry out its power to “provide emergency ambulance service.” *Id.*

Importantly, that 1982 Opinion distinguished fees for *actual service* from the special emergency ambulance fees imposed under West Virginia Code § 7-15-17. The latter fees, about which you have asked, may be imposed broadly even on those who have not actually used the emergency ambulance service. *See Clay Cnty. Citizens for Fair Taxation v. Clay Cnty. Comm’n*, 192 W. Va. 408, 452 S.E.2d 724 (1994) (upholding an emergency ambulance fee ordinance that imposed a \$25 annual fee upon “any bona fide owner or occupant of a living unit within the geographic boundaries of Clay County, West Virginia”); 56 W. Va. Op. Att’y Gen. 308 (1976) (reasoning that it would be inconsistent with the statute’s purpose “if the service fee [permitted by § 7-15-17] was to be collected only from those persons who actually made use of the emergency ambulance service”).

In the Opinion, the Office expressly declined to decide how the special emergency ambulance fees may be imposed and collected, and who may do so. Referencing an even earlier Opinion, the Office stressed that the Legislature had failed to “prescribe the mode by which such fee is to be imposed.” 59 W. Va. Op. Att’y Gen. 161 (quoting 56 W. Va. Op. Att’y Gen. 308). Rather than decide the question, the Office called for “legislative clarification” of “the manner in which the special emergency ambulance fee, provided for by Code 7-15-17, is to be imposed and collected.” *Id.* Thirty years have passed without legislative clarification.

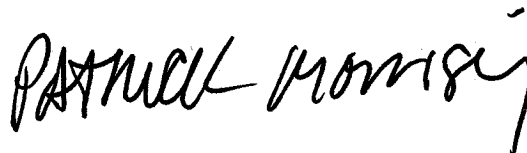
We now conclude, for several reasons, that an emergency ambulance authority lacks the statutory power to collect the special emergency ambulance fees permitted by West Virginia Code § 7-15-17. *First*, we look to the plain text of the statute, which clearly contemplates that the *county commission*—not an ambulance authority—is responsible for the special emergency ambulance fees. The statute specifically grants “the county commission” the authority to impose the special emergency ambulance fee and expressly requires that the fee be imposed “by ordinance”—something that only the county commission can do. W. Va. Code § 7-15-17. It also contemplates that an ambulance authority will “receive[] funds from the special emergency ambulance fees,” which suggests that the authority will not collect the fees itself. *Id.* (emphasis added). “[W]here the language of a statutory provision is plain, its terms should be applied as written and not construed.” *DeVane v. Kennedy*, 205 W.Va. 519, 529, 519 S.E.2d 622, 632 (1999).

Second, we note that the Legislature specifically chose to separate the special emergency ambulance fees in § 7-15-17 from an emergency ambulance authority's enumerated powers in § 7-15-10. "In the interpretation of statutory provisions the familiar maxim *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, applies." Syl. Pt. 3, *Manchin v. Dunfee*, 174 W. Va. 532, 327 S.E.2d 710 (1984). We cannot ignore that the detailed list of enumerated powers in § 7-15-10—including such powers as an ambulance authority's ability to "encumber or mortgage all or part of its facilities and equipment"—did not cross-reference the power in § 7-15-17 to impose or collect the special emergency ambulance fees.

Third, this conclusion is consistent with a county commission's constitutional duty to superintend and manage a county's fiscal affairs. Article IX, Section 11 of the West Virginia Constitution provides that county commissions "have the superintendence and administration of the internal police and fiscal affairs of their counties." W. Va. Const. art. IX, § 11. The special emergency ambulance fees fall squarely within a county's fiscal affairs, as those fees are specifically intended to be "used to pay for, in whole or in part, the establishment, maintenance and operation of [emergency ambulance] authorit[ies]." W. Va. Code § 7-15-17; *see also* 59 W. Va. Op. Att'y Gen. 190 (1982) (explaining that "the control or management of the [ambulance] authority is subordinate to the constitutional duty vested in the county commission to manage the internal fiscal affairs of the county").

For all these reasons, we determine that a county commission—not an emergency ambulance authority—has the statutory power to collect the special emergency ambulance fees permitted by West Virginia Code § 7-15-17. It follows that an emergency ambulance authority lacks the statutory power to bring suit in Magistrate Court to collect those fees. We have not been asked and do not decide, however, whether a county commission could delegate its statutory power to an emergency ambulance authority.

Sincerely,



Patrick Morrissey
Attorney General

Elbert Lin
Solicitor General

Derek A. Knopp
Assistant Attorney General