



State of West Virginia
Office of the Attorney General

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Attorney General

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October 27, 2025

The Honorable Savannah Hull Wilkins
Tucker County Prosecuting Attorney
211 First Street, Suite 207
Parsons, WV 26287

Dear Prosecutor Wilkins:

You have asked for an Opinion of the Attorney General about the Sheriff's authority to obtain local businesses' sales records to collect Tucker County's hotel occupancy tax and special emergency ambulance service fee. This Opinion is being issued under 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." When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence and discussions with the Office of the Attorney General.

In your request, you explain that Tucker County businesses are subject to a 6% hotel tax and a 2% special emergency ambulance service fee. The hotel tax is due monthly, in accordance with West Virginia Code § 7-18-10, and the EMS fee is due quarterly, as required by a local ordinance enacted under West Virginia Code § 7-15-17. "Hotel operator[s]" in Tucker County collect the hotel tax as part of the price of a "hotel room." W. VA. CODE § 7-18-1(d); *see also* W. VA. CODE § 7-18-3 (defining terms). And the EMS fee applies to revenue from "recreational and amusement" sales including "[s]hort-term rentals," "camping," watercraft rentals, and skiing fees. Tucker Cty., W. Va., Ordinance, Special Emergency Ambulance Serv. Fee (Jan. 31, 2025).

The County Commission suspects that some businesses haven't paid their full hotel taxes and EMS fees. The Tucker County Sheriff has thus sent delinquency letters requesting payment. But without access to businesses' sales records, neither the Sheriff nor the County Commission can determine the exact amounts owed, as both the tax and fee are calculated as percentages of total sales.

With these facts in mind, your letter raises the following legal questions:

- (1) *Does the Sheriff have the authority to request sales information from businesses to determine amounts owed?*
- (2) *Can the Sheriff send a subpoena to the businesses to obtain the needed information?*

We conclude that the Sheriff has the authority to request sales information directly from businesses. The Sheriff has a potential alternative route too: the Tax Commissioner may be able to provide the sought after information to the Sheriff. Separately, you should not use a subpoena, except in limited circumstances.

DISCUSSION

I. The Sheriff can directly request the information.

Because treasurers are “created by statute,” they are “possessed only of such powers as are expressly conferred by the Constitution and legislature, together with such as are reasonably and necessarily implied in the full and proper exercise of the powers so expressly given.” Syl. Pt. 1, *State ex rel. State Line Sparkler of WV, Ltd. v. Teach*, 187 W. Va. 271, 272, 418 S.E.2d 585, 586 (1992) (discussing powers of county commissions).

The “sheriff is a constitutional officer and[,] by statute, ... [he] is also ex officio the county treasurer.” *State ex rel. Damron v. Ferrell*, 149 W. Va. 773, 776, 143 S.E.2d 469, 471 (1965); W. VA. CODE § 7-5-1. In his role as county treasurer, the Sheriff has limited powers: he “shall receive, collect and disburse all moneys due” to the county. W. VA. CODE § 7-5-1. And his responsibilities are mandatory. *Ferrell*, 149 W. Va. at 778-79, 143 S.E.2d at 472-473. Even where—like here—the Legislature has granted county commissions the power to collect taxes and fees directly, the Sheriff must continue to do so unless the commission opts to use another individual or entity. See W. VA. CODE § 7-15-17 (stating that “a county commission may ... collect” an EMS fee); W. VA. CODE § 7-18-1(a) (giving county commissions ability to “impose[] and collect[]” a hotel tax); see Letter from Att’y Gen. of W. Va. to the Hon. Raymond LaMora, 2020 WL 4209605, *1-2 (July 9, 2020) (explaining power to collect is coextensive).

The Sheriff has the implied authority to request sales information from businesses. Both the hotel tax statute and the ambulance fee statute are to be liberally construed in favor of the Sheriff’s power. As to the tax, “courts have been tolerant in construing statutes prescribing the procedure for assessments[,] ... the factor of administrative convenience in the enforcement and collection of taxes is taken into consideration by the courts.” *Calhoun Cnty. Assessor v. Consol. Gas Supply Corp.*, 178 W. Va. 230, 232, 358 S.E.2d 791, 793 (1987) (cleaned up). And as to the fee, the law decrees that the statute must be “liberally construed” to achieve its purpose of funding and providing necessary emergency ambulance services. W. VA. CODE § 7-15-2(e).

As noted, the Sheriff, as treasurer, has the express power to “collect ... moneys” owed to the county. W. VA. CODE § 7-5-1. Meaning, the Sheriff must “gather or exact from a number of persons or sources” all “funds” or “sums of money” owed to the county. *Collect*, MERRIAM-

WEBSTER.COM, <https://tinyurl.com/495n3687> (last visited Oct. 24, 2025); *Money*, BLACK'S LAW DICTIONARY (12th ed. 2024). The hotel tax and EMS fee qualify as “moneys due” to the county. W. VA. CODE § 7-5-1. So the Sheriff must collect them. *Id.* But the Sheriff will not be able to fulfill his charge here unless and until he has businesses’ sales information in hand, given that the hotel tax and EMS fee are percentage-based amounts. *Cf. State ex rel. Pub. Serv. Comm’n of W. Va. v. Lackawanna Transp. Co.*, 230 W. Va. 144, 148, 736 S.E.2d 741, 745 (2012) (explaining how the Public Service Commission’s Power to “investigate and review” appropriate rates included the power to demand certain tax records of an affiliate to a regulated business). So, making a request to businesses is necessary for the Sheriff to fulfill his mandatory duty to “collect” as treasurer. *Cf. In re Shonk Land Co.*, 157 W. Va. 757, 761, 204 S.E.2d 68, 70 (1974) (explaining how a county tax assessor is empowered to “seek out all information which would enable him to properly fulfill his legal obligation,” including by requiring an annual report of all coal properties). The power to request that information from businesses is thus “reasonably and necessarily implied in the full and proper exercise of the powers so expressly given.”* Syl. Pt. 4, *State ex rel. W. Va. Parkways Auth. v. Barr*, 228 W. Va. 27, 716 S.E.2d 689 (2011).

The Tax Commissioner might also be able to provide the information the Sheriff needs. Although the Tax Commissioner is generally obligated to keep sales tax information confidential, he may disclose returns to county commissions in a few specific circumstances. Relevant here, the Tax Commissioner can enter into a written exchange-of-information agreement with the Sheriff for the Sheriff to obtain or inspect tax forms. W. VA. CODE § 11-10-5d(i). Under such an agreement, the county would also have to provide information to the Tax Commissioner. *Id.* The Sheriff may also be able to obtain the tax information as part of a criminal investigation by ex parte order. W. VA. CODE § 11-10-5d(e). The Sheriff should explore these alternatives if his direct inquiries are unsuccessful.

III. The Sheriff should use a subpoena only when appropriate.

Based on the facts you’ve presented, a subpoena would not be appropriate at this time. While courts do issue subpoenas in both criminal and civil matters, and officials may also issue administrative subpoenas in certain statutorily specified circumstances, you have not identified any pending proceeding or investigation that would serve as a basis for issuing a subpoena, whether civil, criminal, or administrative. *See* W. VA. R. CRIM. P. 17(c) (permitting subpoenas that “command the person to whom it is directed to produce” “documentary evidence”); W. VA. R. CIV. P. 45(a)(1)(A)(iii) (permitting subpoenas to “produce designated documents”); W. VA. CODE § 52-2-11 (permitting grand jury subpoenas); *see, e.g.*, W. VA. CODE § 5-16-12a(d) (permitting administrative subpoenas for PEIA fraud).

That doesn’t mean subpoenas are *never* appropriate. The County Commission may collect unpaid EMS fees by civil action. *See* Syl. Pt. 6, *Randy Waugh*, 236 W. Va. 468, 781 S.E.2d 379

* As noted above, the county commission itself also has the power to collect these taxes and fees. As to the ambulance service fees, our Office has already recognized that nothing in the relevant statute “constrains the *manner* by which commissions may collect unpaid fees.” Letter from Att’y Gen. to Raymond K. LaMora III, 2018 WL 4608630, at *2 (July 18, 2018). And as to the hotel taxes, county commissions can “promulgate such regulations and return forms as may be necessary or desirable for the administration and collection of the tax.” W. VA. CODE § 7-18-13(a). Given that the Sheriff’s power to collect is co-extensive with the Commission’s, it would make sense that the Sheriff has the same broad means of collection available that the Commission would. 2018 WL 4608630, at *2.

(confirming that “a civil action” is an appropriate means of collection); *see also* Letter from Att’y Gen. to Raymond K. LaMora III, 2018 WL 4608630, at *2 (July 18, 2018) (“[T]here is no doubt that [a civil action] is a permissible, legal method to collect delinquent special emergency ambulance service fees.”). The hotel tax is enforceable by civil action as well. *See* W. VA. CODE § 7-18-13(a) (“[T]he sheriff ... shall be the county’s agent for administration and collection of the tax and shall have the power to distrain property and to initiate civil suits for collection.”). Civil subpoenas would be available if collection advances to litigation, subject to the limits of the Fifth Amendment. W. VA. R. CIV. P. 45(a)(1)(A)(iii); *see State ex rel. McGraw v. Pawn Am.*, 205 W. Va. 431, 434, 518 S.E.2d 859, 862 (1998). Further, failure to comply with the hotel tax’s requirements carries criminal penalties, meaning your office is empowered to investigate these offenses. *See* W. VA. CODE § 7-18-15(d) (“Proceedings against any person under this section shall be initiated in the county ... wherein such person resides if any element of the offense occurs” there, “or if no element of the offense occurs in such county of residence, then in the county where the offense was committed.”). And as part of a criminal investigation, prosecutors could obtain tax information by grand jury subpoena (or, as discussed, by ex parte order). W. VA. CODE § 52-2-11; W. VA. CODE § 11-10-5d(e). Once charges are brought, you have trial subpoenas at your disposal. *See* W. VA. R. CRIM. P. 17(c).

Sincerely,

A handwritten signature in black ink, appearing to read "John B. McCuskey". The signature is fluid and cursive, with a long horizontal stroke at the end.

John B. McCuskey
West Virginia Attorney General

Holly J. Wilson
Principal Deputy Solicitor General