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The Honorable Michael W. Parker
Randolph County Prosecuting Attorney
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Elkins, West Virginia 26241

Dear Prosecutor Parker:

You have asked for an Opinion of the Attorney General about whether the Randolph County Commission may impose a 0.4% "Special Emergency Ambulance Service Fee" on many taxable consumer sales in the county. This Opinion is 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 Attorney General's Office.

You explain that Randolph County's Ambulance Authority is facing an "unsustainable financial burden." The Authority responds to around 7,000 service calls annually, operates eleven ambulances, and employs 67 full- and part-time employees. The Authority primarily receives its funding from private or public insurance reimbursements, while receiving no state, county, or municipal funding. Over the past year, operational costs have increased, and federal shutdowns have delayed reimbursements. Thus, the Authority has taken out short-term loans and looked for other funding sources. The Authority's financial position has forced it to consider either restricting its service hours or shuttering some stations and furloughing some employees.

Because of these funding concerns, the Randolph County Commission adopted the "Special Emergency Ambulance Service Fee" Ordinance in April 2026. Randolph County, W. Va., Special Emergency Ambulance Service Fee Ordinance (Apr. 16, 2026) (Ordinance). The Ordinance requires businesses to collect a 0.4% fee on most consumer sales. *Id.* at 2. Purchases over $10,000 are exempt, as are purchases made by registered non-profit organizations. *Id.* Businesses remit the proceeds to the County Sheriff, who then deposits them into the County's EMS fund. *Id.* at 4-5. The Authority may file a request to the Commission for release of those funds to cover "reasonable and necessary expenses" it "actually incurred." *Id*. at 5. The Commission itself also retains a portion of the funds. *Id.*

Shortly after the Commission adopted the Ordinance, the West Virginia Tax Division expressed concern that the Ordinance would cause West Virginia to violate its obligations under the Streamlined Sales and Use Tax Agreement. The SSUTA is a multistate agreement intended "to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce." W. VA. CODE § 11-15B-5(a). It "provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state." *Id.* § 11-15B-8. As a member State, West Virginia agreed to adopt the SSUTA's uniform, state-wide standards for administration and collection of sales taxes.

Out of concern that the Ordinance violated the SSUTA, the letter states that the Tax Division advised the Commission that the Tax Division would need to pursue legal action against the County unless it repealed the Ordinance. In response, in July 2026, the Commission suspended the Ordinance's enforcement pending further legal review, including issuance of this opinion.

Your letter raises the following three questions:

(1) *Does the Ordinance violate the authority granted to counties by West Virginia Code § 7-15-17 for the imposition of special fees to provide for emergency ambulance services?*

(2) *Does the Ordinance violate the Streamlined Sales and Use Tax Agreement, codified at West Virginia Code § 11-15B-1, et seq.?*

(3) *Could the Ordinance be restructured as a simple flat fee, based not upon a percentage of the cost of the goods and services purchased, but instead upon the occurrence of the transaction? The Commission would consider granting exemptions from such a service fee including possibly a minimum transaction amount. For example, could the Ordinance be lawfully structured as a flat fee (such as x cents) upon the occurrence of every sale of goods or services in the County with a purchase price in excess of a specific dollar amount?*

West Virginia Code § 7-15-17 empowers the Commission to "collect from the users of emergency ambulance service within the county a special service fee, which shall be known as the 'special emergency ambulance service fee.'" But the Ordinance here looks like a sales tax, is calculated like a sales tax, has the scope of a sales tax, and is directly tied to the State's sales tax. Thus, we conclude that the Ordinance is a tax. Section 7-15-17 doesn't give counties the authority to impose a tax—only a fee. And we are not aware of any other authority for such a tax. So the Ordinance exceeds the Commission's statutory authority.

Because the Ordinance is a tax, we must also evaluate it for compliance with the SSUTA—and we agree with the Tax Division's conclusion that the Ordinance conflicts with that law. The SSUTA requires States to adopt uniform sales and use tax standards. The County's unauthorized tax violates the uniformity and state-administration principles found in the SSUTA and thereby puts the State at risk of noncompliance.

Finally, we conclude that, under the right conditions, a flat fee would likely be lawful so long as the fee bears a reasonable relationship to both the statutory ambulance service fee's purpose and the cost of services provided. West Virginia courts have upheld flat user fees when the funds raised are correlated to the service's costs, and the same could be true here. We emphasize, however, that some of the Ordinance's current features—such as the $10,000 cap—would likely cause the fee to resemble a tax rather than a true user fee. Thus, we suggest removing those features to solidify the flat fee as a fee on potential ambulance users, not as a fee on any specific kind of transaction. Recognizing that the Ambulance Authority also faces real and continuing financial demand, we also encourage the Commission to work with the Tax Division to explore any other options for revenue-raising measures that might ensure the service's continued operation.

DISCUSSION

I. The Ordinance imposes a tax, not a fee.

County commissions 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 … given." Syl. pt. 1, *State ex rel. State Line Sparkler of WV, Ltd. v. Teach*, 187 W. Va. 271, 418 S.E.2d 585 (1992) (cleaned up). These powers include "superintendence and administration of the … fiscal affairs of their counties … with authority to lay and disburse the county levies." W. VA. CONST. art. IX, § 11. But that power extends only as far "as may be prescribed by law." *Id*. County commissions thus possess only "the authority to impose the fees or taxes which are authorized by the legislature." *City of Huntington v. Bacon*, 196 W. Va. 457, 465-66, 473 S.E.2d 743, 751-52 (1996).

The Commission purported to impose this assessment using its authority under West Virginia Code § 7-15-17.[1] That statute authorizes county commissions to "impose upon and collect from the users of emergency ambulance service within the county a special service fee." The fee's "proceeds … shall be … used only to pay reasonable and necessary expenses actually incurred and the cost of buildings and equipment used in providing emergency ambulance service to residents of the county." *Id*. But Section 7-15-17 doesn't expressly outline or limit the methods by which county commissions can impose the statute's fee. And although the Emergency Ambulance Service Act of 1975 includes some definitions, it doesn't define "fee." *See* W. VA. CODE § 7-15-3.

Because the statute doesn't expressly prescribe the permissible fee's form, we determine the "intention of the legislature … not from any single part, provision, section, sentence, phrase or

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[1] The Commission does not assert any other potential source of authority for making the assessment, and we are not aware of any.

word, but rather from a general consideration of the act or statute in its entirety." Syl. pt. 1, *Parkins v. Londeree*, 146 W. Va. 1051, 124 S.E.2d 471 (1962). And as always, "[o]ur primary duty in determining the meaning of W[est] V[irginia] Code § 7-15-17 is to give effect to the Legislature's purpose in enacting the Emergency Ambulance Service Act of 1975." *Randy Waugh/Waugh's Mobile Home Park v. Morgan Cnty. Emergency Med. Servs. Bd.,* 236 W. Va. 468, 475, 781 S.E.2d 379, 386 (2015).

Here, the Legislature's purpose "[wa]s the establishment and maintenance of adequate emergency ambulance systems for the entire State." *Randy Waugh*, 236 W. Va. at 475, 781 S.E.2d at 386 (quoting W. VA. CODE § 7-15-2(b)). Those systems, the Legislature declared, are "necessary to promote the health and welfare of the citizens and residents of" West Virginia. W. VA. CODE § 7-15-2(b). To achieve the Act's objectives, Section 7-15-2(e) mandates that the Act's provisions "shall be liberally construed." Indeed, the statute later "repeats, and thereby emphasizes, the Legislature's" liberal-construction command. *Teets v. Miller*, 237 W. Va. 473, 482, 788 S.E.2d 1, 10 (2016) (citing W. VA. CODE § 7-15-18). The Act's text accordingly "demonstrat[es] the vast importance placed by the Legislature upon the provision of emergency services" and affords county commissions significant leeway in structuring emergency ambulance fees. *Id.* at 481, 788 S.E.2d at 9.

Fee-shaping discretion notwithstanding, Section 7-15-17 grants the Commission *only* the authority to impose a user fee, not a tax. *See Clay Cnty. Citizens for Fair Tax'n v. Clay Cnty. Comm'n*, 192 W. Va. 408, 410-11, 452 S.E.2d 724, 726-27 (1994); *see also* W. VA. CONST. art. X, § 1 ("[T]axation shall be equal and uniform throughout the State."). Thus, the question is whether the Ordinance, despite being labeled a fee, is an impermissible tax. This question can be "difficult" to answer "because the courts have not adopted universal definitions of these terms." *Wetzel Cnty. Solid Waste Auth. v. Div. of Nat. Res.*, 195 W. Va. 1, 5, 462 S.E.2d 349, 353 (1995).

On the one hand, a tax is "a forced contribution by the public at large to meet public needs." 71 AM. JUR.2D State and Local Taxation § 13 (2026). And "[t]he general consensus is that '[t]he classic tax' is imposed by a legislature upon many, or all, citizens" to "raise[] money, contributed to a general fund, and spent for the benefit of the entire community." *Wetzel Cnty. Solid Waste Auth.*, 195 W. Va. at 5, 462 S.E.2d at 353 (quoting *San Juan Cellular Tel. Co. v. Pub. Serv. Comm'n*, 967 F.2d 683, 685 (1st Cir. 1992)); *see also City of Clarksburg v. Grandeotto, Inc.*, 204 W. Va. 404, 409, 513 S.E.2d 177, 182 (1998) (explaining that "states are free to determine their own fiscal policy as long as the fiscal policy does not violate the Constitution of the United States").

On the other hand, a fee is "a charge for a direct public service rendered to the particular consumer." 71 AM. JUR.2D State and Local Taxation, *supra* § 13. Therefore, "[t]he classic 'regulatory fee' is imposed by an agency upon those subject to its regulation." *Wetzel Cnty. Solid Waste Auth.*, 195 W. Va. at 5, 462 S.E.2d at 353 (quoting *San Juan Cellular*, 967 F.2d at 685); *see also*, *e.g.*, *Dean v. Town of Addison*, 207 W. Va. 538, 543, 534 S.E.2d 403, 408 (2000) (explaining that an ordinance raising funds "solely for fire protection efforts" and proportionate to actual cost created a permissible "fee"); *Shannon v. City of Hurricane*, No. 11-0257, 2012 WL 2914305, at *3 (W. Va. Feb. 10, 2012) (memorandum decision) (same as to stormwater management); *City of Charleston v. Bd. of Educ. of Kanawha Cnty.*, 158 W. Va. 141, 145, 209 S.E.2d 55, 57 (1974) (same as to fire protection); *accord Ctr. for Auto Safety Inc. v. Athey*, 37 F.3d 139, 142 (4th Cir. 1994) (same in Commerce Clause context).

In short, "the primary purpose of a tax is to obtain revenue for the government, while the primary purpose of a fee is to cover the expense of providing a service or of regulation and supervision of certain activities." *Cooper v. City of Charleston*, 218 W. Va. 279, 285, 624 S.E.2d 716, 722 (2005) (cleaned up); *cf. United States v. City of Huntington*, 999 F.2d 71, 74 (4th Cir. 1993) (explaining, in another context: "User fees are payments given in return for a government-provided benefit. Taxes, on the other hand, are enforced contributions for the support of government." (cleaned up)).

But purpose alone doesn't resolve the matter. How a charge is imposed is often dispositive: "where the operation and effect of a service charge appears to impose a tax" the Court "examines the service charge more closely." *City of Huntington*, 196 W. Va. at 466, 473 S.E.2d at 752 (cleaned up). And when a government assesses a fee like a tax, the Supreme Court of Appeals typically treats it as a tax even if it would otherwise meet the definition of a fee. *See City of Fairmont v. Pitrolo Pontiac-Cadillac Co.*, 172 W. Va. 505, 509, 308 S.E.2d 527, 531 (1983) ("Analyzing the ordinance, it is apparent that it closely resembles the general State ad valorem property tax for real and personal property."); *see also Clay Cnty. Citizens*, 192 W. Va. at 410, 452 S.E.2d at 726 (analyzing whether an ambulance fee was "imposed as an additional *ad valorem* tax").

Whether an exaction is "assessed like a tax" in this context often turns on the fee's rate. The Supreme Court of Appeals has upheld flat rates and scaled rates based on considerations relevant to the fee's purpose. *See Cooper*, 218 W. Va. at 283, 624 S.E.2d at 720 (upholding a "$1.00 per calendar week City Service Fee on each individual who works within the corporate limits of the City of Charleston" (cleaned up)); *see also City of Huntington*, 196 W. Va. at 467-69, 473 S.E.2d at 753-55 (upholding a fire-and-flood-protection-services fee that was imposed "at an annual rate plus a percentage based upon the square footage of space contained in each structure"). Meanwhile, the Court has struck down percentage fees based on existing taxes. *See*, *e.g.*, *City of Fairmont*, 172 W. Va. at 510, 308 S.E.2d at 532 (striking down an otherwise properly apportioned fire-protection fee because it bore the "essential characteristic of an ad valorem tax," that is, "that the tax is levied according to the value of the property").

With these principles in mind, we turn to the Ordinance. On its face, the Ordinance purports to impose a special service fee. Ordinance at 1. But again: labels don't control, and "the name by which [an assessment] is described" is "immaterial." *Hare v. City of Wheeling*, 171 W. Va. 284, 289, 298 S.E.2d 820, 826 (1982) (quoting *Dawson v. Ky. Distilleries & Warehouse Co.*, 255 U.S. 288, 292 (1921)). Instead, the Ordinance's "character" as either a tax or fee "must be determined by its incidents" and operation. *Id.* (quoting *Dawson*, 255 U.S. at 292).

Very little distinguishes the Ordinance's assessment structure from the State's sales and use taxes. The Ordinance imposes a mandatory 0.4% surcharge on most *taxable* retail transactions, requires businesses to collect and remit the charge, and applies pervasively (rather than focusing on specific users of emergency services). *See* Ordinance at 3-5. We find it especially notable that the Ordinance is assessed based on a proportion of taxable sales of consumer goods and is directly tied to the State's six-percent sales and use tax. Ordinance at 1; *see also* W. VA. CODE § 11-15-

3(b) (setting state sales and use tax at six percent). Indeed, the Ordinance acknowledges that it "collect[s] an *additional* zero-point four percent" on "all sales" on top of the state sales tax. Ordinance at 1 (emphasis added); *see also Valero Terrestrial Corp. v. Caffrey*, 205 F.3d 130, 134 (4th Cir. 2000) (noting that a "classic tax" is imposed "upon a large segment of society"). The Commission then retains a portion of these collected sums, ostensibly for "administration." Ordinance at 5.

Appearance and effect are what count, and the Ordinance charge "has the elements of a consumers' sales tax in that" it "levies a tax" on the sale itself: a broad tax base, collection by a business (rather than the service users), percentage-based assessments of that sort seem divorced from the likely service use of the persons being assessed, and retention of some monies for the county's general fund. *Hukle v. City of Huntington*, 134 W. Va. 249, 254, 58 S.E.2d 780, 783 (1950). In these ways, the Ordinance bears the characteristics of a sales tax rather than a permissible user fee. *Cf. Chamber of Com. of U.S. of Am. v. Lierman*, 90 F.4th 679, 685 (4th Cir. 2024) (explaining, in another context, how factors like "what entity imposes the charge" and "what population is subject to the charge" matter in deciding whether it is a tax or a fee (cleaned up)). And although *Hukle* dealt with whether a tax was a gross sales tax or a consumer's sales tax, the bottom line remains: "[i]t is a well-nigh universal principle that courts will determine and classify taxation on the basis of realities, rather than what the tax is called in the taxing statute or ordinance." *Huckle*, 134 W. Va. at 255, 58 S.E.2d at 783.

Ultimately, the Ordinance's percentage-of-sale-price assessment method mirrors the municipal sales and use tax. And where fees have been assessed in ways virtually identical to an existing tax, the Court has treated those fees as taxes regardless of their purposes. *See Hare*, 171 W. Va. at 290, 298 S.E.2d at 826; *see also City of Fairmont*, 172 W. Va. at 510, 308 S.E.2d at 532. Although the Court hasn't addressed the question in the sales-tax context, we see no reason to believe the outcome would be different here.

Because the County Commission lacks the authority to impose its own sales and use tax—even one designed to support emergency ambulance services—we believe that the Ordinance is likely invalid.

II. The Ordinance violates West Virginia's uniform taxation obligations and jeopardizes the State's membership in the SSUTA.

We also agree with the Tax Division's conclusion that the Ordinance conflicts with the SSUTA. West Virginia has adopted the SSUTA and thereby agreed to adopt uniform sales and use tax standards. As a member State, West Virginia has "agreed to comply with the SSUTA's required provisions." *Ally Fin. Inc. v. State Treasurer*, 918 N.W.2d 662, 670 (Mich. 2018). The Ordinance does not abide by those standards and thus risks putting the State out of compliance with the agreement.

West Virginia law governs the State's membership in the SSUTA and provides certain conditions which the agreement had to meet before the Tax Commissioner could enter the State into it. *See* W. VA. CODE §§ 11-15B-5, -7. One such condition requires that "[t]he agreement must provide for reduction of the burdens of complying with local sales and use taxes" through a set of required procedures and limitations. *Id.* § 11-15B-7(5). For example, it requires the SSUTA to restrict "variances between the state and local tax bases" and to require state administration of local sales tax levies. *Id.* § 11-15B-7(5)(A), (B). But the agreement does not "invalidate[] or amend[] any provision" of state law, nor does it "amend or modify any law of th[e] state." *Id.* § 11-15B-6.

The Ordinance—especially its exemptions—present compliance problems with the SSUTA. As noted, the Legislature conditioned the Tax Commissioner's entry into the Agreement on its restricting "variances between the state and local tax bases," W. VA. CODE § 11-15B-7(5)(A), and Section 11-15B-34 separately requires that the local base be identical to the State's, subject to certain exceptions, *see id.* § 11-15B-34; SSUTA art. III, §302. But the Ordinance departs from the State's base in at least two ways:

- First, the Ordinance exempts purchases exceeding $10,000. Ordinance at 2. The State's consumer sales and service tax has no such exclusion. *See* W. VA. CODE § 11-15-9 (enumerating exemptions). Indeed, the SSUTA expressly bars such price ceilings. SSUTA art. III, § 323(B).

- Second, the Ordinance contains a blanket exemption on purchases by registered non-profit organizations. Ordinance at 2. Yet while the State's base conditionally exempts some purchases by certain qualifying organizations, *see* W. VA. CODE § 11-15-9(a)(5), (6), it does not exempt every purchase made by any non-profit organization, leading to further disuniformity from the Ordinance.

On top of these tax base deviations, the Ordinance poses a host of other uniformity problems under the SSUTA. For example, the Ordinance's base deviations may run afoul of the SSUTA's requirements that States utilize uniform enactment and administration procedures and mechanisms for entity, product, and use exemptions. *See* SSUTA art. III, §§ 316, 317. The Ordinance also requires that its proceeds be remitted to the County Sheriff on a monthly or quarterly basis. Ordinance at 3-4. That remission violates the SSUTA, which requires State level administration of local taxes, including a requirement that taxes be remitted to and distributed by the "state level authority." SSUTA art. III, § 301(A); W. VA. CODE § 11-15B-33. The Ordinance further risks violating the SSUTA's mandate that sellers only fill out a single tax return, that includes "all the taxing jurisdictions within the member State." SSUTA art. III, § 318; W. VA. CODE § 11-15B-25. Beyond that, except sellers that collect more than "thirty thousand dollars" of sales in a preceding year, States "shall … [r]equire only one remittance for each return." SSUTA art. III, § 319(A); W. VA. CODE § 11-15B-26. Because it goes through a separate county-administered process, the Ordinance's procedures appear to be inconsistent with the remittance requirements, as well. Ordinance at 3-4.

Problems aside from uniformity also lurk. For example, the SSUTA requires the State to follow certain procedures to keep businesses informed about tax rate changes. For instance, the SSUTA requires member States to set local tax jurisdictions and boundaries, and to keep a database of those local tax jurisdictions. *See* SSUTA art. III, § 305. And States must maintain both rate and boundary files that allow business owners to determine what local tax rates apply to a particular five- or nine-digit zip code. STREAMLINED SALES TAX GOVERNING BOARD, TECHNOLOGY GUIDE ch. 5, § I, at 10 (2019), https://perma.cc/5JRY-QR22. Because the Ordinance isn't administered at the state level, its tax isn't maintained as part of West Virginia's database, again violating the SSUTA.

Likewise, to ensure business owners are kept in the loop, the SSUTA provides that local tax rate changes will only be effective "after a minimum of sixty days' notice to sellers." SSUTA art. III, § 305(A). It requires States to "apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers." *Id*. The SSUTA requires notice to be given for rate changes, too. *Id*. § 329. And States must make changes to the Taxability Matrix when a local jurisdiction adopts a new tax. *Id*. § 328(B). Based on the information provided, these requirements were not met in adopting the Ordinance.

Ultimately, we agree with the Tax Division that the Ordinance is a tax that violates the SSUTA. And if the State is deemed noncompliant based on these violations, it is put at risk of possible sanctions. *See* SSUTA art. VIII § 805.1(d) (explaining that a "member state found out of compliance with the Agreement retains its status as a member state … subject to any sanctions imposed by the Governing Board"). We thus recommend that the County rescind the Ordinance for this separate reason.

III. A flat fee on sales occurring in Randolph County is an untested method, but it appears to satisfy the Court's fee requirements.

In lieu of the existing ordinance, you also ask about a flat fee. The Supreme Court of Appeals has never considered whether a flat-rate fee on consumer goods is a valid user fee in any context. Nevertheless, based on the Court's precedents, we conclude such a fee would likely withstand judicial scrutiny if the County eliminates the Ordinance's other tax-like features. Recharacterizing the assessment as a fee instead of a tax also resolves both the authority problems and the SSUTA conflicts presented in Sections I and II.

A. As discussed, user fees are assessments whose "primary purpose … is to cover the expense of providing a service or of regulation and supervision of certain activities." *City of Huntington*, 196 W. Va. at 466, 473 S.E.2d at 752 (cleaned up). This test doesn't demand a perfect match: a fee need only be "*reasonably* related to use of the service." *Clay Cnty. Citizens*, 192 W. Va. at 411, 452 S.E.2d at 727 (emphasis added). The class of users must be reasonable, too—an ordinance that "provides for a fee assessment to users of a special service must reasonably classify the users, and the services for such a charge must be in conformity with state laws." *City of Princeton v. Stamper*, 195 W. Va. 685, 688, 466 S.E.2d 536, 539 (1995). And "perfect equity is not the test" for determining whether a fee is reasonable. *Clay Cnty. Citizens*, 192 W. Va. at 411, 452 S.E.2d at 727. Rather, the fee simply cannot be "inherently unreasonable." *Ellison v. City of Parkersburg*, 168 W. Va. 468, 473, 284 S.E.2d 903, 906 (1981). Thus, a fee will be invalidated only when a challenger shows both that it is "clearly unreasonable" and that it "clearly fails to reasonably serve the purpose for which it was enacted." *Cooper*, 218 W. Va. at 287, 624 S.E.2d at 724.

Remember, too, that counties have broad power under Section 7-15-17 to assess a fee designed to provide emergency ambulance services. *See supra* Section I. County commissions may then use those proceeds from the fee "to pay reasonable and necessary expenses actually incurred and the cost of buildings and equipment used in providing emergency ambulance service to residents of the county." W. VA. CODE § 7-15-17. Thus, the statute itself layers further discretion on top of the general judicial deference afforded to fee decisions. *See Teets*, 237 W. Va. at 481, 788 S.E.2d at 9 (quoting W. VA. CODE § 7-15-2(e)); *see also* W. VA. CODE § 7-15-18 (reiterating mandatory liberal construction).

We think that assessing a flat fee on all sales occurring within Randolph County "succeeds in tying the burden of the fee to the usage of the service in a sufficiently reasonable way." *Clay Cnty. Citizens*, 192 W. Va. at 411, 452 S.E.2d at 727. Section 7-15-17 permits a fee on "the users of emergency ambulance service within the county." And we must liberally construe this language to "advance[] the establishment and maintenance of adequate emergency ambulance systems." *Randy Waugh*, 236 W. Va. at 475, 781 S.E.2d at 386.

Liberally construed, "users" surely includes people who are in Randolph County purchasing goods or services. By virtue of their physical presence alone, such individuals are "users of the emergency ambulance service." *Cf. Randy Waugh*, 236 W. Va. at 479, 781 S.E.2d at 390 ("During the time that the property is occupied, its residents are users of the emergency ambulance service."). Flat per-household fees, for example, succeed "in tying the burden of the fee to the usage of the service in a sufficiently reasonable way" irrespective of how many users live in the household. *Clay Cnty. Citizens*, 192 W. Va. at 411, 452 S.E.2d at 727; *see also City of Moundsville v. Steele*, 152 W. Va. 465, 471, 164 S.E.2d 430, 434 (1968) (finding fee was a reasonable charge "regardless of whether one or more persons paid the charges of twenty-five cents per front foot"). Just as per-household fees have a nexus to prospective service use, so too does physical presence. The product sale accordingly serves as a proxy for the potential demand on the service.[2]

Whether an individual actually uses the ambulance service doesn't change their status as a user, either: "it is not requisite to the validity of an assessment … that the benefits be immediate or direct." *City of Huntington*, 196 W. Va. at 470, 473 S.E.2d at 756 (cleaned up). Nor does residency bear on whether an individual is a user of ambulance services. After all, anyone physically present in Randolph County benefits from the availability of ambulance services "in a real sense, regardless of" whether they have actually used the service. *City of Princeton*, 195 W. Va. at 688-89, 466 S.E.2d at 539-40 (finding that "imposing a mandatory service fee on the collection and removal of residential refuse regardless of actual use, in order to prevent a health menace from imperiling an entire community, is a reasonable and valid" fee).

Further, your letter notes that a yearly rate of around 7,000 calls has created an "unsustainable financial burden" for Randolph County ambulance services. To achieve the Act's

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[2] But some risks remain with this approach, as the nexus between service and fee is not as tight as in past cases. A per-transaction fee scales more with shopping frequency than physical presence. A resident who buys coffee every day thus pays 300 times what a resident who shops monthly pays, though both are equally "users" of ambulance service. Prior cases address consistent, periodic assessments (one fee per household, one fee per worker, etc.). Further, the nexus between the service and fee is undermined by exemptions like the $10,000 per sale cap. A "big-dollar" purchaser would use services in the same way as a "small-dollar" one would. For reasons like these, the county could still see challenges if the Ordinance is restructured to operate as a true fee.

goals, the Authority's funding must adequately support the infrastructure to permit ambulances to respond to the call volume received—from both resident and non-resident users. *See* W. VA. CODE § 7-15-17. Without the ability to collect fees from all users, the County would be unable to provide services to residents, thereby "frustrat[ing] the very purpose of the Act." *Randy Waugh*, 236 W. Va. at 475, 781 S.E.2d at 386.

Case law in other contexts supports our view of who may be charged as a "user." Indeed, the Supreme Court of Appeals has frequently upheld municipal service fees assessed against non-residents who stand to benefit from services. In *Cooper*, the Court upheld an ordinance that assessed service fees tied to employee headcount. 218 W. Va. at 287, 624 S.E.2d at 724. In that case, the Court concluded that people employed in the City stood to benefit from the police protection and road maintenance the fees paid for, so it was reasonable to classify them as users. *Id*. Likewise, in *Davisson v. City of Bridgeport*, the Court upheld an ordinance that "assessed a fire service fee on 'users and beneficiaries' of services provided by the City who reside outside the corporate limits of the City, but who [were] within what is referred to as a 'First Due Area.'" No. 13-0378, 2014 WL 184436, at *1 (W. Va. Jan. 15, 2014). The same vision of "user" should hold true here.

Thus, as long as the flat fee is used to provide ambulance services according to the statute, we believe the County could properly categorize those purchasing goods or services in Randolph County as "users." *See City of Princeton*, 195 W. Va. at 688, 466 S.E.2d at 539 (ordinances need only "reasonably classify the users"); *see also* Off. of the W. Va. Att'y Gen., Opinion Letter to the Honorable Rebecca L. Miller (Sept. 19, 2022), 2022 WL 4587769, at *2 (interpreting the Act to permit fees on "potential users" of emergency ambulance services).

Finally, the prospective fee's point-of-sale nature, without more, wouldn't transform it into a tax. The Supreme Court of Appeals hasn't addressed this issue, but examples from other States support our conclusion. For instance, Aspen, Colorado, imposed a $0.20 charge on all paper bags to cover the cost of their disposal, and the State's supreme court upheld the charge as a reasonable fee, not a tax. *Colo. Union of Taxpayers Found. v. City of Aspen*, 418 P.3d 506, 515 (Colo. 2018). And other courts haven't questioned point-of-sale fees when those fees are tied to regulatory goals. In Minnesota, for example, a health impact fee is assessed on retail consumers who buy cigarettes. *State ex rel. Humphrey v. Philip Morris USA, Inc.*, 713 N.W.2d 350, 356 (Minn. 2006) ("Minnesota law requires that retail cigarette purchasers, not cigarette manufacturers or distributors, bear the economic burden of the Health Impact Fee."). Both examples indicate to us that a flat-rate fee assessed at the point of sale isn't a tax by virtue of its timing alone.

B. Though we believe it would be permitted, we reiterate that a flat-rate, point-of-sale fee ventures into largely uncharted territory. With that in mind, we note the following considerations.

First, we emphasize that physical presence in Randolph County is almost certainly a prerequisite for any fee to have a reasonable relation to ambulance services. Just as it was "obvious[]" that "owners of raw land" and "owners of mineral interests do not use ambulance services," *Clay Cnty. Citizens*, 192 W. Va. at 411, 452 S.E.2d at 727, so too it is obvious that consumers who are not physically present in Randolph County do not use ambulance services. Virtual or out-of-county sales of consumer goods should thus be excluded. The current Ordinance doesn't appear to us to exclude virtual or out-of-county sales. *See* Ordinance at 3 (encompassing "all sales or services rendered in Randolph County to which sales tax is imposed" and "paid by any individual user"). Similarly, to further delineate the proposed flat fee from a sales tax, we suggest removing any exceptions for tax-exempt organizations and businesses, as well as for purchases over $10,000. *See* Ordinance at 2; *cf. City of Clarksburg*, 204 W. Va. at 408, 513 S.E.2d at 181 (tax-exempt defendants had to pay municipal service fees). We also caution that the fee should apply to all sales, rather than only to those above a minimum threshold, as sale price lacks any "direct and reasonable relationship" to ambulance services. *See Cooper*, 218 W. Va. at 287, 624 S.E.2d at 724. In short, limitations like those currently in the Ordinance would push a flat fee closer toward its "operation and effect" appearing to be an unauthorized sales tax. *City of Huntington*, 196 W. Va. at 466, 473 S.E.2d at 752.

Second, a fee's reasonableness is tied to whether it is proportionate to the costs of the service provided. *See City of Huntington*, 196 W. Va. at 467, 473 S.E.2d at 753 (upholding a fee under the presumption it will be used for statutory purposes *and* "as long as the proceeds do not exceed the costs" of the service). A fee's amount accordingly "must bear a direct and reasonable relationship to the actual services provided in exchange for the fee." *Cooper*, 218 W. Va. at 287, 624 S.E.2d at 724. "[A]ny fee that does not meet those standards will be struck down … as unreasonable." *Id*.

On these facts and without comparable precedent, we have no way to determine what flat rate amount would make the proposed fee "excessive." Generally, courts compare the cost of the services to the amount of funds the fee raised. And *Cooper* expressly cautioned that "if cities are tempted to inflate such fees … thereby gouging and imposing burdensome and unfair collections they should be mindful of this admonishment and wary of imposing excessive fees." 218 W. Va. at 287, 624 S.E.2d at 724 (cleaned up). Still, the line between reasonableness and excessiveness remains uncertain for an untested fee like the one you propose.

Third, we return to the SSUTA concerns. We believe under West Virginia law that a flat-rate fee on purchases made within the county is a fee, not a tax. The SSUTA concerns only sales taxes, and it does not alter state law. *See* W. VA. CODE § 11-15B-6. Indeed, the SSUTA defines "[s]ales or use taxes" as "taxes that are commonly referred to as sales or use taxes that are paid to a state, local jurisdiction … that are based on a *percentage* of the sales price or purchase price." SSUTA app. E, Disclosed Practice No. 2, at 231 (adopted May 15, 2014; amended through May 13, 2026) (emphasis added). And it expressly excludes "similar tax[es]" from that definition, including other taxes "imposed on the seller or purchaser … at the time of sale." *Id*. Excise taxes like those are of course different from the potential fee here. *See* 71 AM. JUR. 2D State and Local Taxation, *supra* § 13. But the SSUTA's recognition of these other point-of-sale taxes as distinct from sales and use taxes demonstrates that the agreement doesn't categorize an assessment as a sales tax solely because it's assessed upon the occurrence of a sale.

West Virginia similarly excludes other point-of-sale assessments from the definition of sales tax. West Virginia Code Rule § 110-15-2.35.4, for instance, excludes any additional "federal, state[,] or local taxes simultaneously imposed on a purchase" from the definition of "[g]ross proceeds." Similarly, West Virginia Code Rule § 110-15-2.35.1 includes "excise tax or other tax imposed … prior to the imposition of the" State sales and use tax. *See West Virginia Taxability*

Matrix, STREAMLINED SALES TAX GOVERNING BD. (Aug. 4, 2026, 2:47 PM), https://perma.cc/HHQ4-KJV9 (cleaned up) (including other taxes in how gross sales are calculated in the State's taxability matrix).

West Virginia's exclusions align with those of other SSUTA member States: for example, Washington adopted a municipal flat-rate excise tax on firearms and ammunition, which its highest court upheld. *Watson v. City of Seattle*, 401 P.3d 1, 11 (Wash. 2017) (en banc) (distinguishing excise tax on firearms and ammunition from Washington sales and use tax); *see Streamlined Sales Tax*, WASH. DEP'T OF REVENUE, https://perma.cc/BG5G-XERX (last visited Aug. 18, 2026). Likewise, Minnesota imposes a retail delivery fee of fifty cents on sellers of taxable tangible personal property and clothing when transactions have a charge of $100 or more. *Retail Delivery Fee*, MINN. DEP'T OF REVENUE, https://perma.cc/E83J-MY3G (last visited Aug. 18, 2026). Thus, we have good cause to believe that a flat-rate fee on transactions made within Randolph County would not be a sales tax under the SSUTA.

Still, the SSUTA Governing Board is an independent body, so we cannot state with certainty the position the organization will take on a flat, point-of-sale fee. We can say only that the proposed flat-rate charge (with the limitations described previously) would *likely* be a fee under West Virginia law. Because of the remaining uncertainty in this area of law, we nevertheless encourage the Commission to continue to work with the Tax Division to identify the most defensible ways to ensure the Ambulance Authority's financial viability.

Sincerely,

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