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The Honorable Joseph E. Barki, III
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Prosecutor Barki:

You have asked for an Opinion of the Attorney General about monies drawn from the Emergency Medical Services Salary Enhancement Fund. This Opinion is being issued under West Virginia Code Section 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.

The Legislature created the Emergency Medical Services Salary Enhancement Fund "to support supplementing the salaries of, and provid[e] crisis response for, county emergency medical service personnel." W. VA. CODE § 16-4C-25(a). Those personnel include "any person certified by the commissioner to provide emergency medical services as set forth by legislative rule." *Id.* § 16-4C-3(h); *see also id.* § 16-4C-25(a) (cross-referencing Section 16-4C-3). The Legislature then charged the Director of the Office of Emergency Medical Services with promulgating rules for "distributing any available funds to counties to accomplish the purpose of this section." *Id.* § 16-4C-25(b).

The Director promulgated final legislative rules in early 2024. *See* W. VA. CODE R. § 64-116-1, *et seq*; see also W. VA. CODE § 64-5-1(k) (approving the rule). Among other things, the legislative rules define a qualifying employee as "[a]n Advanced Emergency Medical Technician, Emergency Medical Technician, Emergency Medical Vehicle Operator, or Paramedic who is a paid employee of an ambulance transporting agency and participates in 10 or more 911 call responses in a 12-month period." W. VA. CODE R. § 64-116-3.1. The rule also establishes a "presumption that active emergency medical services personnel will receive salary supplementation funds from

their primary agency." *Id.* § 64-116-4.9. Primary agencies are those "at which active emergency medical services personnel are employed for 51 percent or more of their working hours." *Id.* § 64-3.10.

A county may employ part-time and temporary emergency medical services personnel. They may also work for more multiple agencies in multiple counties. Your letter asks how the statute and legislative rules address salary enhancements for those employees.

You raise the following legal questions:

(1) *May counties that house only one ambulance transporting agency distribute Emergency Medical Services Salary Enhancement funds to temporary or part-time medical services personnel who participated in 10 or more 911 call responses in a 12-month period?*

(2) *May counties that house only one ambulance transporting agency distribute Emergency Medical Services Salary Enhancement funds to temporary or part-time emergency services personnel who participated in 10 or more 911 case responses in a 12-month period, where the personnel are also participating in 10 or more 911 call responses in a 12-month period for an ambulance transporting agency in another county?*

The plain language of the statute and the rule answers your first question. *All* personnel who participated in ten or more 911 call responses in a twelve-month period are eligible. Neither the Legislature nor the Director distinguished between full-time, part-time, temporary, seasonal, or other kinds of personnel. The minimum-run condition and certification as an emergency medical services employee are the sole requirements for paid personnel.

Further, an otherwise eligible individual working for an agency in one county can receive a supplementation from that agency even if the same individual is eligible to receive a supplementation from a different agency in another county. Both the statute and the legislative rule are silent on that circumstance, leaving the agency with the discretion to pay.

DISCUSSION

Counties do not distribute funds directly to employees. Rather, the Director of the Office of Emergency Medical Services distributes funds to counties "for salary supplementation and crisis response" in accordance with a formula set out in the legislative rules. W. VA. CODE R. § 64-116-4.4; *see also id.* § 64-116-4.8. Counties then distribute salary-supplementation funds to agencies. *See, e.g., id.* § 64-116-4.9 (describing how "[c]ounties receiving funds ... that house more than one ambulance transporting agency shall distribute funds to those agencies using a percentage allocation based on 911 call volume"), *id.* § 64-116 App. B (referring to "amount of salary supplementation distributed to each emergency medical services provider to each agency in your county"). Agencies may use those funds "for the sole purpose of supplementing the salaries of active emergency services personnel." *Id.* § 64-116-3.11.

We thus construe your questions to address how the emergency medical services agencies may distribute their county distributions to personnel.

I. Part-Time and Temporary Personnel

First, part-time and temporary personnel are eligible for salary supplementation from the Fund if they respond to at least ten 911 calls in a twelve-month period.

Start with the statute's language. Funds are intended to "supplement[] the salaries of … county emergency medical service personnel as that term is defined in § 16-4C-3[(h)] of th[e] code or a county designated or contracted emergency medical service provider." W. VA. CODE § 16-4C-25(a). In the cross-referenced provision, the Legislature defines "emergency medical services personnel" to mean "*any* person certified by the commissioner to provide emergency medical services as set forth by legislative rule." *Id.* § 16-4C-3(h) (emphasis added); *see also* W. VA. CODE R. § 64-48-6 (describing the certification process and requirements for such persons).

In using the word "any," the Legislature stressed the definition's expansive reach. "Any" is a "widely encompassing" term. *McKneely v. W. Va. Consol. Pub. Ret. Bd.*, 226 W. Va. 553, 560, 703 S.E.2d 524, 531 (2010); *see also Babb v. Wilkie*, 589 U.S. 399, 405 n.2 (2020) ("We have repeatedly explained that the word 'any' has an expansive meaning." (cleaned up)). Indeed, the Supreme Court of Appeals has construed a similar statute in just such an expansive way, finding that it embraces nearly all persons who "provid[e] medical care, particularly in emergency circumstances." *Jan-Care Ambulance Serv., Inc. v. Pub. Serv. Comm'n of W. Va.*, 206 W. Va. 183, 193, 522 S.E.2d 912, 922 (1999). And in adding that "county designated or contracted emergency service provider[s]" are also covered, the Legislature doubly emphasized the statute's broad scope. W. VA. CODE § 16-4C-25(a).

At the same time, the Legislature did *not* use words that would otherwise limit eligibility. It did not say in either the substantive statute or the definitional provision that the funds were meant for full-time employees alone. The Legislature's choice not to demand more is meaningful. "Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted." *Eldercare of Jackson Cnty., LLC v. Lambert*, 250 W. Va. 291, 902 S.E.2d 840, 853 (2024); *cf. Bane v. Bd. of Educ. of Monongalia Cnty.*, 178 W. Va. 749, 753, 364 S.E.2d 540, 544 (1987) (noting where "[t]he language of … special levies … required [only that] the special levy funds *in the aggregate* … be used as salary supplements and to extend services," that language "delegated to the Board the discretion as to the manner in which it would allocate the salary supplements and extended services among the service personnel").

The legislative rule confirms that temporary and part-time employees can be eligible for salary supplementation. Again, funds distributed for "salary supplementation" are "for the sole purpose of supplementing the salaries of active emergency medical services personnel." W. VA. CODE R. § 64-116-3.11. And "[a]ctive emergency medical services personnel" are defined as "[a]n Advanced Emergency Medical Technician, Emergency Medical Technician, Emergency Medical Vehicle Operator, or Paramedic who is a paid employee of an ambulance transporting agency and

participates in 10 or more 911 call responses in a 12-month period." *Id.* § 64-116-3.1. These provisions say nothing about full-time or part-time status. A paid employee[1] need only respond to a minimum number of calls each year to qualify.

As "a valid legislative enactment," these rules control the issue unless they were "beyond the constitutional or statutory authority extended to the agency involved or if the rule[s] [are] determined to be arbitrary or capricious." *Swiger v. UGI/AmeriGas, Inc.*, 216 W. Va. 756, 763, 613 S.E.2d 904, 911 (2005). Particularly where a statute is "silent or ambiguous" on a specific issue, West Virginia courts have said that agencies have "discretion to interpret" the statute. *Keener v. Irby*, 245 W. Va. 777, 785, 865 S.E.2d 519, 527 (2021). The agency has "permissibl[y]" done so here. *Id.*

The fund's purpose also supports this understanding. *See State ex rel. Appleby v. Recht*, 213 W. Va. 503, 510, 583 S.E.2d 800, 807 (2002) ("Words and clauses should be given a meaning which harmonizes with the subject matter and the general purpose of the statute."). The fund is meant to "encourage retention." W. VA. CODE § 16-4C-25(a). It aims at those counties who "may demonstrate the most need," who have exhausted other funding avenues (special levies), or who "have a challenge recruiting and retaining emergency medical services personnel due to interstate competition." *Id.* § 16-4C-25(b)(1)-(4). In difficult hiring environments like these, flexibility in hiring is key. Yet if the statute were construed to address only full-time employees, then the fund's benefit would be limited. Counties could use the funds to retain only a narrow class of employees that may not fit particular counties' needs. We doubt that the Legislature would have intended such an outcome.

For all these reasons, county emergency medical services agencies may pay part-time and temporary employees with monies distributed from the fund, so long as those employees meet the legislative rule's minimum-run requirement of ten 911 calls per year.

II. Part-Time and Temporary Personnel

Second, an agency may pay a salary supplement to an employee who completes at least ten 911 calls for that agency even if the employee is also employed by another agency in a different county.

Here again, the statute does not place any limits relevant to your question. It does not suggest that different rules might apply to personnel who are employed by multiple agencies, even though it's known that such personnel exist. So long as a person is certified, they appear to be eligible, subject to the requirements of the legislative rule. Again: courts cannot "arbitrarily ... read into [a statute] that which it does not say." *Rowe v. Sisters of Pallottine Missionary Soc'y*, 211 W. Va. 16, 25, 560 S.E.2d 491, 500 (2001).

Your question instead seems prompted by the legislative rule's reference to "primary agencies." In a subsection that discusses "counties ... that house more than one ambulance

[1] The legislative rule refers to "paid employees" (as opposed to volunteers) presumably because the statute's references to salary *supplementation* assume that covered individuals are already receiving salaries.

transporting agency," the rule creates "a presumption that active emergency medical services personnel will receive salary supplementation funds from their primary agency." W. VA. CODE R. § 64-116-4.9-10. A primary agency is "[a]n ambulance transporting agency at which active emergency medical services personnel are employed for 51 percent or more of their working hours." *Id.* § 64-116-3.10.

We doubt that this provision is relevant to your circumstances, as it focuses on a single county with two or more agencies. That context should be decisive, as "the meaning of a word cannot be determined in isolation, but it must be drawn from the context in which it is used." *State v. Louk*, 237 W. Va. 200, 204, 786 S.E.2d 219, 223 (2016) (cleaned up). The Director might have had unique concerns with an employee receiving multiple "supplementations" from the same county distribution (rather than multiple supplementations from separate county distributions). Likewise, the Director may have been concerned that, without the expressed "presumption," two intra-county agencies might merely point the finger at one another, each expecting the other to bear the financial burden of keeping the employee in the county.

Still, even assuming this primary-agency presumption applies here, it would not preclude payment to a person employed by two agencies in two counties. Under the presumption, the "primary agency" would have authority to pay the salary supplement to a dual-employed person consistent with the presumption described in the legislative rule. But the legislative rule would also not forbid payment by an agency that does not qualify as a "primary agency." For one thing, as has been recognized for a century, a presumption is not conclusive. *See Lincoln v. French*, 105 U.S. 614, 617 (1881) (explaining how presumptions "are in their nature disputable" and "[n]o conclusive character attaches to them"). For another, suggesting that primary agencies should pay salary supplements does not necessarily imply that other agencies should *not*. Those taking a contrary view would likely resort to the canon of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of the other. But "[a]s [courts] have held repeatedly, the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an associated group or series, justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (cleaned up); *accord State v. Beaver*, 248 W. Va. 177, 194, 887 S.E.2d 610, 627 (2022) (explaining how the canon "only applies in limited circumstances," as when a series of "two or more terms or things ... go hand in hand"). Here, those key circumstances are absent, so the canon does not apply.

The fund's purpose again supports our conclusion. *See Appleby*, 213 W. Va. at 510, 583 S.E.2d at 807. It seems appropriate that individual agencies would retain discretion to decide whether to supplement an individual's salary who has already received a salary supplement from another agency. Indeed, if the goal is retention, then the case for providing an additional payment might be stronger, as the employee might otherwise be inclined to leave the non-paying agency for the paying one. Ultimately, whether the employee is paid by one, two, or more agencies, the Legislature's objective to "increas[e] [the] salaries of emergency medical service workers" is fulfilled. W. VA. CODE § 16-4C-25(a).

Thus, an agency may pay a salary supplement to an employee who completes at least ten 911 calls for that agency even if the employee is also employed by another agency in a different county.

Sincerely,

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