



State of West Virginia
Office of the Attorney General

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The Honorable Justin St. Clair
Monroe County Prosecuting Attorney
PO Box 740
Union, WV 24983

Dear Mr. St. Clair:

You have asked for an Opinion of the Attorney General about whether the Monroe County Commission (“the Commission”) may pay local EMS squads for emergency ambulance services without seeking competitive bids for the provision of those services. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General “shall give written opinions and advise upon questions of law, . . . whenever required to do so, in writing, by . . . any . . . state officer, board, or commission.” To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Office of the Attorney General.

In your correspondence, you explain that the Commission, in response to financial difficulties experienced by a local EMS squad, has voted to impose an Emergency Ambulance Service Fee pursuant to the Emergency Ambulance Service Act of 1975, W.V. Code § 7-15-1 *et seq.* (the “Act”). You further explain that the Commission has not voted to form an “emergency ambulance service authority” under the Act. *Id.* § 7-15-3(a). Instead, the Commission has voted to create an emergency ambulance fund, from which it will pay EMS squads contracted by the Commission. You also note that the Commission does not intend any of these contracts to involve the construction of buildings or other facilities in the County.

Your letter poses two distinct questions about the potential application of West Virginia law, and specifically West Virginia Code § 7-15-16, to this arrangement: *First*, whether the Commission is required to seek competitive bids for emergency ambulance service contracts; and *second*, whether the Commission can give preference to bids from local ambulance squads in

the event that bids are required. We conclude that the Commission is not required to seek competitive bids from EMS squads for emergency ambulance services, and therefore, the second question posed by your correspondence need not be addressed.

This Opinion addresses the following legal question:

Is a county commission that contracts for ambulance services required to select these contracts through a competitive bidding process?

Based on the text of West Virginia Code § 7-15-16, related statutory provisions, and the negative-inference principle of statutory interpretation (“*expressio unius est exclusio alterius*”), we conclude that county commissions are not required to solicit competitive bids for ambulance service contracts. Instead, we conclude that the competitive bidding requirement contained in § 7-15-16 applies only to “emergency ambulance service authorit[ies]” authorized by the Act, not to county commissions that elect to provide ambulance services via private contract.

As you are likely aware, the Act imposes a duty on county commissions to provide emergency ambulance services “where such service is not otherwise available.” See W. Va. Code § 7-15-4. The Act, however, also provides such commissions with a variety of options through which to provide such services. Specifically, the Act provides that “[t]he county commission may provide the service directly through its agents, servants and employees; or through private enterprise; or by its designees; or by contracting with individuals, groups, associations, corporations or otherwise; or it may cause such services to be provided by an authority, as provided for in this article.” *Id.*; see also W. Va. Att’y Gen. Op., 2015 WL 7431400 (July 11, 2013) (noting that the Act “gives county commissions wide discretion to choose how [emergency ambulance] services are to be provided”).

Also, as you allude in your correspondence, a county commission may impose a special service fee to be deposited in a special fund for the provision of ambulance services. *Id.* § 7-15-17. This fee can be used “to pay reasonable and necessary expenses actually incurred” in providing ambulance services, and “may be used to pay for, in whole or in part, the establishment, maintenance and operation of an authority, as provided for in this article.” *Id.* (emphasis added). In other words, a county commission is not required to create and finance an “authority” to provide ambulance services under the Act. Rather, a commission may collect and spend funds for the provision of ambulance services via the other means the Act explicitly mentions.

The “authority” mentioned in the Act refers to an “emergency ambulance service authority,” which is an entity created specifically by the Act to ensure the provision of emergency ambulance services to the people of West Virginia. *See* W. Va. Code §§ 7-15-2, 7-15-3(a). These “authorities” receive certain benefits conferred by the Act, such as tax-exempt status and the ability to receive contributions from the state and federal governments. *See* W. Va. Code §§ 7-15-11, 7-15-13. In exchange, “authorities” must abide by certain rules set forth in the Act—including the requirement to use competitive bidding for certain procurements. W. Va. Code § 7-15-16.

Section 7-15-16, which you mention in your correspondence, reads in full:

A purchase of or contract for all supplies, equipment and materials and a contract for the construction of facilities by any authority, when the expenditure required exceeds the sum of ten thousand dollars, shall be based on competitive sealed bids. Bids shall be obtained by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for publication is the service area of the authority. The second publication shall be made at least fourteen days before the final date for submitting bids. In addition to publication, the notice may also be published by any other advertising medium the authority may consider advisable and the authority may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in the office of the authority.

W. Va. Code § 7-15-16 (emphasis added).

As a textual matter, this section applies only to purchases or contracts made by an “authority” created under the Act, as opposed to emergency ambulance services provided by county commissions by other authorized means—such as through agents, employees, private enterprise, or private contract. *See* W. Va. Code § 7-15-4. While there could be some debate as to whether the phrase “by any authority” under the first sentence of § 7-15-16 modifies all that precedes it—“[a] purchase of or contract for all supplies, equipment and materials and a contract for the construction of facilities”—or only the final item in that list, the remainder of the section dispels any ambiguity as to the scope of this provision. In specifying applicable bidding requirements, Section 7-15-16 refers in four additional places solely to “the authority,” and not to any other arrangement whereby a county commission may provide emergency ambulance services.

The express reference to bidding requirements imposed on “authorit[ies]” suggests by negative implication that such bidding requirements do not apply when county commissions elect to provide ambulance services by other permissible means, such as by contracting directly with local EMS squads. Under the principle of statutory construction *expressio unius est exclusio alterius*, “the express mention of one thing implies the exclusion of another.” Syl. Pt. 3 of *Manchin v. Dunfee*, 174 W. Va. 532, 327 S.E.2d 710 (1984). This canon of construction applies with particular force here, where the Legislature in other parts of the Act made explicit reference to “county commission[s]” separate from covered “authorit[ies].” *See, e.g.*, W. Va. Code § 7-15-12 (“Any authority created pursuant to the provisions of this article and any county commission which provides emergency ambulance service hereunder shall not be subject to regulation by the public service commission.”). Because the Legislature knew how to bind a county commission *itself* to particular requirements, it is reasonable to assume that the bidding rules, which only mention authorities, do not apply independently to county commissions.

In addition, your correspondence suggests that the Commission plans to enter into contracts with EMS squads directly to provide services to the County. These EMS squads presumably already possess the supplies, equipment, and materials necessary to perform emergency services or else will procure them separately with the County’s (or other) funds.

Therefore, the County would not be purchasing or contracting directly for “supplies, equipment and materials” or the “construction of facilities”—which would be necessary if the County were creating an “authority.” Instead, the County will be relying on local EMS squads to possess or obtain such items as a necessary incident of providing emergency services. Here, too, the *expressio unius* canon applies. The Act contemplates that competitive bidding is required for contracts relating to goods or commodities. By negative implication, § 7-15-16 does not appear to apply to contracts for services provided by local EMS squads.

Finally, the Act itself essentially codifies the *expressio unius* canon, by instructing that the procedures set forth within the statute are intended to be exclusive. Specifically, the Act provides:

This article shall constitute full and complete authority for the provision of emergency ambulance service within a county by a county commission and for the creation of any authority and carrying out the powers and duties of any such authority. The provisions of this article shall be liberally construed to accomplish its purpose and *no procedure or proceedings, notices, consents or approvals shall be required in connection therewith except as may be prescribed by this article.*

W.Va. Code § 7-15-18 (emphasis added).

In other words, the Legislature apparently intended the bidding procedures for authorities set forth in the text of the Act to be the sole bidding procedures applicable to the provision of emergency ambulance services. Because the Act does not expressly create bidding procedures for contracts between county commissions and local EMS squads, § 7-15-18 instructs that no such requirements apply. Indeed, because § 7-15-18 provides that the Act’s procedures are intended to be exclusive, there is no need to inquire whether other provisions of the West Virginia Code might independently require county commissions to use competitive bidding.

For example, there is a general provision in Article 1, Chapter 7 of the West Virginia Code that requires county commissions to use competitive bidding procedures in certain circumstances. W.Va. Code § 7-1-11(a). We need not address, however, whether this general provision would otherwise apply to a county commission contracting for ambulance services, because the exclusivity provision in § 7-15-18 instructs that only those procedures set forth *by the Act* shall apply in the context of emergency ambulance services.

The Supreme Court of Appeals of West Virginia has recognized that this provision precludes application of any other procedures apart from those specifically mandated by the Act. *Teets v. Miller*, 237 W. Va. 473, 484-85, 788 S.E.2d 1, 12-13 (2016). In *Teets v. Miller*, the Court noted that county commissions are generally required to notify the public in advance of any special sessions. *See id.* (citing W.Va. Code § 7-1-2). But the Court further noted that a county commission was not required to follow these “open meetings” procedures when conducting a special session to address matters related to ambulance services. *Id.* The Court reasoned that the specific and exclusive language of § 7-15-18 precluded the application of any procedural requirements other than those set forth in the Act. *Id.* Applying the logic of *Teets*

here, the bidding procedures set forth in the Act—which apply only to authorities—preclude the application of any other bidding procedures that might otherwise apply to county commissions.

In sum, we conclude that the Act authorizes county commissions to procure emergency ambulance services “by contracting with . . . groups,” such as local EMS squads. *See* W. Va. Code § 7-15-4. We also conclude that the Act does not require a commission to use competitive bidding when it contracts directly with local EMS squads, as opposed to procuring supplies, equipment, or materials for a covered “authority.” *See id.* § 7-15-16. Further, we conclude that the procedures set forth in the Act are exclusive, and thus that there is no need to consider the potential application of the general bidding requirements that might otherwise apply to county commissions. *See id.* § 7-15-18. Finally, because the Monroe County Commission is not required to seek competitive bids for emergency ambulance services, we do not reach the question of whether a county commission could favor local service providers were competitive bidding required.

This letter takes no position on whether competitive bidding procedures may be required for any services other than emergency ambulance services. Also, while county commissions are not legally obligated to use competitive bidding procedures for emergency ambulance services, nothing prevents them from doing so. Indeed, there may be sound reasons why competitive bidding would be advisable, such as promoting transparency in government and ensuring that taxpayers receive the best value for their services. Under current law, the decision whether to use competitive bidding rests in the discretion of the county commission. If the Legislature desires to require all county commissions to provide emergency ambulance services via competitive bidding, it may of course amend the Act to expressly provide for that result.

Sincerely,



Patrick Morrisey
Attorney General

Thomas M. Johnson, Jr.
Deputy Solicitor General