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The Honorable Raymond LaMora
Tucker County Prosecuting Attorney
211 First Street, Suite 207
Parsons, WV 26287

Dear Prosecuting Attorney LaMora:

You have asked for an Opinion of the Attorney General about billing for ambulance fees. This Opinion is being issued pursuant to 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.” To the extent this Opinion relies on facts, it depends solely on the factual assertions in your correspondence with the Office of the Attorney General.

Your letter raises the following legal question:

Is the Tucker County Sheriff required to bill and collect the money associated with a county ambulance fee, or may another county employee fulfill this role at the request of the Tucker County Commission?

We conclude that if a county commission does not designate a party to collect the county’s ambulance fee, then the county sheriff must collect the fees. A county commission is not required to use the sheriff’s office to collect the ambulance fee, however, and may delegate responsibility for this task to a different county employee.

Discussion

West Virginia Code § 7-5-1 appoints sheriffs as their county’s “ex officio county treasurer.” As the treasurer, the sheriff “shall receive, collect and disburse all moneys due such county or any district thereof.” *Id.* Sheriffs act in a purely administrative capacity as treasurer,

and have “no discretion in making payment of claims” or in collecting claims. Syl. pt. 1, *State ex rel. Damron v. Ferrell*, 149 W. Va. 773, 143 S.E.2d 469 (1965). Further, a sheriff may not decline to act as treasurer because the Legislature used the word “shall” in Section 7-5-1; “in the absence of language in the statute showing a contrary intent on the part of the Legislature,” the term “shall” “should be afforded a mandatory construction.” Syl. pt. 1, *Nelson v. W. Virginia Pub. Employees Ins. Bd.*, 171 W. Va. 445, 300 S.E.2d 86 (1982). At a county commission’s request a sheriff therefore has a duty to collect any fees owed to the county.

Nevertheless, in at least some circumstances a sheriff’s *mandatory* duty to collect fees is not *exclusive*. For certain functions and fees, the Legislature has granted county commissions power to collect fees directly. One example is the Emergency Ambulance Service Act of 1975, which bestows on county commissions authority to provide “emergency ambulance service . . . to all the residents of the county where such service is not otherwise available.” W. Va. Code § 7-15-4. A commission may provide the service “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.” *Id.* The “provisions of this [Act] shall be liberally construed to accomplish its purpose.” *Id.* § 7-15-18. And critically, it provides that commissions may “by ordinance, impose upon *and collect* from the users of emergency ambulance service within the county a special service fee.” *Id.* § 7-15-17 (emphasis added).

Reading this provision together with a sheriff’s duty to collect fees in Section 7-5-1, we conclude that in the specific context of collecting ambulance fees, a sheriff must collect fees owed to the county unless the commission designates another individual or entity to do so.

First, it is a key canon of statutory construction that “[s]tatutes which relate to the same subject matter should be *read and applied together* so that the Legislature’s intention can be gathered from the whole of the enactments.” Syl. pt. 8, *Barber v. Camden Clark Mem. Hosp. Corp.*, 240 W. Va. 663, 815 S.E.2d 474 (2018) (citation omitted; emphasis added). Unless two statutes are in irreconcilable conflict, courts must “construe such statutes so as to give effect to each.” Syl. pt. 9, *id.* (citation omitted). Here there is admittedly some tension between the two statutes at issue, but they are not in irreconcilable conflict. It is a fair interpretation, reading and applying the statutes together as required, that sheriffs “shall” collect fees in the sense that they are the default officer with this responsibility and cannot refuse to fulfill this role when asked, but that the commission also has discretion not to call on the sheriff’s office and instead take direct responsibility for collecting fees.

Second, any conflict between the statutes would be resolved in favor of the more specific Emergency Ambulance Act. When “faced with a choice between two statutes, one of which is couched in general terms and the other of which specifically speaks to the matter at hand, preference generally is accorded to the specific statute.” *Newark Ins. Co. v. Brown*, 218 W. Va. 346, 351, 624 S.E.2d 783, 788 (2005). Section 7-5-17 deals with authority to collect ambulance fees specifically. By contrast, Section 7-5-1 speaks to a sheriff’s general authority to collect county debts. Thus, even if a reviewing court finds that the two statutes are in irreconcilable conflict, it would very likely give effect to the commission’s specific power to collect ambulance fees in Section 7-15-17.

Third, the Supreme Court of Appeals has affirmed county commissions' broad discretion in how to collect ambulance fees. The Court has explained that "because the [Emergency Ambulance Act] identifies itself as the full and complete authority for the provision of emergency ambulance service . . . it plainly is intended to be the *only authority relied upon by a county commission in undertaking its duty to provide such ambulance authority.*" *Teets v. Miller*, 237 W. Va. 473, 482, 788 S.E.2d 1, 10 (2016) (citation omitted; emphasis added).

And in *Randy Waugh/Waugh's Mobile Home Park v. Morgan Cty. Emergency Med. Servs. Bd., Inc.*, the petitioner argued that the local ambulance authority could not collect ambulance fees he owed because only the commission had authority to sue for collection of ambulance fees. 236 W. Va. 468, 475, 781 S.E.2d 379, 386 (2015). The Court rejected this argument, reasoning that the commission had statutory authority to authorize the ambulance authority to collect delinquent emergency ambulance fees through a civil action. *Id.* The question of a sheriff's separate duty to collect fees was not at issue in this case, but the Court's acknowledgment of commissions' statutory discretion in this area further supports our conclusion that it would reaffirm that discretion if presented with the specific question you raise. After all, if a commission has power to authorize an ambulance authority to bill and collect the money for ambulance fees, then it necessarily has discretion not to use the services of the sheriff's office for the same task. *See also* Opinion of the Attorney General Concerning Collection of Emergency Ambulance Service Fees, 2018 WL 4608630, at *2 (W. Va. A.G. July 18, 2018) (concluding that a county commission may refer "unpaid fees to a collections agency" under Section 7-15-17).

In short, reading both relevant statutes together confirms that although a county sheriff's office may not decline to collect fees if the county commission does not designate another entity, a county commission may also choose, through ordinance, to vest the duty of billing and collecting of fees in one of its employees or to another entity.

Sincerely,



Patrick Morrissey
Attorney General

Lindsay See
Solicitor General

Benjamin Fischer
Assistant Solicitor General