



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

CHARLIE BROWN  
ATTORNEY GENERAL

October 27, 1986

Mr. Michael E. Caryl  
State Tax Commissioner  
State Capitol, Bldg. 1, Room W-300  
Charleston, West Virginia 25305

Dear Commissioner Caryl:

We are in receipt of your letter requesting the opinion of this office regarding the creation of county fire boards and the imposition of a fire service fee.

Your letter, in pertinent part, states:

"Chapter 7, Article 17 of the West Virginia Code, which was enacted in 1984, provides for the creation of county fire boards. Section 3 of that article states in part:

"'Upon the creation of a fire association, any full-time paid fire department located in a municipality, as defined in section nine [§ 8-15-9], Article fifteen, Chapter 8 of this Code is excluded from the provisions of this article.'

"Code § 8-15-9 defines a paid fire department as a municipal fire department maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds.

"Chapter 7, Article 17, Section 12 provides further that before a fire fee can be imposed:

"'[t]en percent of the qualified voters shall present a petition duly signed by them in their own handwriting and filed with the clerk of the county commission directing that the county commission impose such a fee.'

"The question has been raised as to whether the ten percent signature requirement embodied in Section 12 of Article 17 is based on the total population of the qualified voters of the county or whether the ten percent figure is based on the total population of qualified voters residing within the county but outside the corporation limits of the municipality having a full-time paid fire department."

It is the understanding of this office that your question arises from circumstances which exist in Cabell County.

In 1984, the Cabell County Commission sought to provide fire protection services to Cabell County citizens residing outside the corporate limits of Huntington. To provide funding for the services, the Commission ordered the submission of an additional levy to the voters situate in the magisterial districts that were to receive such service. The levy was approved by the voters on June 5, 1984. However, the Commission was informed by the Tax Department that, because the issue was not submitted to all the voters of Cabell County, the levy could not be approved.

With the Legislature's subsequent enactment of Code 7-17-1 et seq., the question set out in your letter has been raised. That question calls for the interpretation or construction of the language of Code 7-17-12, which states:

"Every county commission which provides fire protection services has plenary power and authority to provide by ordinance for the continuance or improvement of such service, to make regulations with respect thereto and to impose by ordinance, upon the users of such services, reasonable fire service rates, fees and charges to be collected in the manner specified in the ordinance. However, before a county commission can impose by ordinance, upon the users of such service, a reasonable fire service fee, ten percent of the qualified voters shall present a petition duly signed by them in their own handwriting and filed with the clerk of the county commission directing that the county commission impose such a fee. The county commission shall not have a lien on any property as security for payments due under the ordinance. Any ordinance enacted under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the

county in which the county fire board is located. In the event thirty percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the clerk of the county commission within fifteen days after the expiration of such publication protest against such ordinance as enacted or amended, the ordinance may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary, general or special election as the county commission directs. Voting thereon may not take place until after notice of the submission has been given by publication as above provided for the publication of the ordinance after it is adopted. The powers and authority hereby granted to county commissions are in addition to and supplemental to the powers and authority otherwise granted to them by other provisions of this code.

"Any fees imposed under this article are dedicated to the county fire board for the purposes [sic] provided in this article.

"In the event the county fire board determines an increase in any such fee imposed by this section is necessary, it shall by resolution request the county commission for such an increase. Procedures set forth in this section for the initial levy of such a fee shall be followed by the county commission in the event an increase is sought. (1984, c. 49.)"

The Supreme Court of Appeals of West Virginia, in dealing with statutory construction, has stated that:

"A statute is open to construction only where the language used requires interpretation because of ambiguity which renders it susceptible of two or more constructions or of such doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning. \* \* \*" Hereford v. Meek, 132 W. Va. 373, 386, 52 S.E.2d 740, 747 (1949).

Along these lines the Court held, in the case of Spencer v. Yerace, 155 W. Va. 54, 180 S.E.2d 868 (1971), that:

"it is the legislative intent manifested in the statute that is important and such intent is to be determined primarily from the language of the statute. \* \* \*" 180 S.E.2d at 871.

As your letter indicates, the language of Code 7-17-12, which calls for the petition signed by 10 percent of the qualified voters, is susceptible to two constructions. One construction would require signatures of 10 percent of the qualified voters of the entire county. The other construction would require signatures of 10 percent of the qualified voters who are not given fire protection by a "full-time paid fire department located in a municipality."

Therefore, in order to determine how the 10-percent figure is to be calculated, it is necessary to examine Code 7-17-12 in its entirety, in an attempt to determine the intent of the Legislature. Reading beyond that portion of Code 7-17-12 which calls for the 10-percent figure, one finds language which states:

"In the event thirty percent of the qualified voters of the county \* \* \* protest against such ordinance as enacted or amended, the ordinance may not become effective until it is ratified by a majority of the legal votes cast thereon by qualified voters of such county \* \* \*." (Emphasis added.)

The language of Code 7-17-12 quoted above gives a clear indication of the Legislature's intention. In the event that 30 percent of the county voters protest its enactment, the Legislature has required the ratification of the fire service fee ordinance by a majority of the voters of the county. This indicates a realization that the issue of fire service fees is one of county-wide importance. It also indicates intent on the part of the Legislature that the 10-percent figure called for in Code 7-17-12 is to be calculated based upon the total number of qualified voters of an entire county. To find otherwise would render the Code section irrational and inconsistent.

This office, in an opinion at 47 Ops. Att'y Gen. 298 [1958], dealt with a question somewhat similar to the one you now pose. The Summers County Court (now Commission) was considering providing fire protection services to magisterial districts outside the corporate limits of the City of Hinton. The Summers County Court sought the opinion of this office as to whether it could submit the issue of fire protection to only those residents who would receive the protection service.

Answering the question in the negative, this office stated that:

"A county is a corporate unit or legal entity which includes both municipalities and unincorporated or rural areas located therein. \* \* \*"

Therefore, based upon the reasons cited above, it is the opinion of this office that the qualified voters of the entire county must be used when calculating the 10-percent signature figure called for in Code 7-17-12.

Very truly yours,

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Attorney General

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