

8264 Luberang



HENRY MCMASTER  
ATTORNEY GENERAL

October 26, 2006

Dennis K. Tyndall, Chief of Police  
City of West Columbia  
P. O. Box 4044  
West Columbia, South Carolina 29171-4044

Dear Chief Tyndall:

In a letter to this office you requested an opinion regarding the 911 system in Lexington County. You indicated that the West Columbia Police Department operates a 24 hour-7 day 911 center that serves West Columbia which is manned and operated by the police department. According to your letter, all 911 funds that are collected by service suppliers are retained by the Lexington County 911 center. You assert that it is your position that these funds should be remitted to your agency for the operation of your center as opposed to the County since your agency administers the 911 system for your jurisdiction. According to your letter, the Lexington County 911 Center handles emergency calls for multiple agencies within the County but not the City of West Columbia. You asked whether a separate ordinance developed by the City would be in order to facilitate a change in the collection process which would allow the City to collect 911 funds. You additionally questioned whether Lexington County would be required to provide previously collected funds to West Columbia.

In examining your questions, a review of relevant statutory provisions is in order. S.C. Code Ann. §§ 23-47-10 et seq. provide for the operation of 911 systems in this State. Pursuant to Section 23-47-20(B)(1), "[a] 911 system must include all of the territory of the local government, either county, municipality, or multi-jurisdictional government." Pursuant to subsection (B)(2) of such provision, "[p]ublic safety agencies that provide emergency service within the territory of a 911 system shall participate in the countywide system." (emphasis added). According to Section 23-47-30,

(A) A local government which seeks funding for a 911 system shall submit to the Division of Information Resource Management (DIRM), South Carolina Budget and Control Board, a 911 system plan for review and approval... The plan must include:...

*Request Letter*

- (2) the location of the PSAP<sup>1</sup> and the county or municipality agency or organization responsible for operating the PSAP
- (3) a listing of those public safety agencies whose services will be available through the 911 system....

Section 23-47-40(A) provides that “[t]he local government is authorized to adopt an ordinance to impose a monthly 911 charge upon each local exchange access facility subscribed to by telephone subscribers whose local exchange access lines are in the area served or which would be served by the 911 service.” Section 23-47-50 provides for subscriber billing. Such provision states that

(D) Service suppliers that collect 911 charges on behalf of the local government are entitled to retain two percent of the gross 911 charges remitted to the local government as an administrative fee. The service supplier shall remit the remainder of charges collected during the month to the fiscal offices of the local government.

In formulating a response to your questions, I contacted individuals with the State Budget and Control Board who oversee 911 systems in this state. I was informed that Lexington County submitted a plan to the Board that has been reviewed and approved consistent with Section 23-47-30 referenced above. It has always been the policy of the Board that once a county has filed a 911 plan that has been approved, not to allow a municipality which is part of an approved county plan to break off and file a separate plan. Moreover, it is the policy of the Board that once a county has adopted a Board approved ordinance under Section 23-47-40, a city cannot adopt a separate ordinance to implement a 911 charge. Additionally, as set forth above, Section 23-47-20(B)(2) provides that “...public safety agencies that provide emergency service within the territory of a 911 system shall participate in the countywide system.” Such provision does not appear to support the separate surcharge funding of a 911 system for West Columbia.

This office, as a matter of policy, typically defers to the administrative interpretation of the agency charged with the enforcement of a statute in question. See, e.g., Ops. Atty. Gen. dated March 9, 2000 and November 25, 1998. As noted in a prior opinion dated October 20, 1997, “construction of a statute by the agency charged with executing it is entitled to the most respectful consideration...and should not be overruled absent cogent reasons.” Moreover, where an administrative interpretation is long-standing and has not been expressly changed by the General Assembly, the agency interpretation is entitled to even greater deference. Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (Ct.App. 1983). As recognized in another prior opinion of this office dated

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<sup>1</sup>The term “PSAP” is the abbreviation for “public safety answering point” which is defined by Section 23-47-10(20) as “...a communications facility operated on a twenty-four hour basis which first receives 911 calls from persons in a 911 service area and which may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies....”

Chief Tyndall  
Page 3  
October 26, 2006

March 12, 1997, if an administrative interpretation is reasonable, courts will defer to such construction even if that construction is not the only reasonable one or the one a court would have adopted in the first instance. Recognizing such, this office defers to the administrative interpretation by the Budget and Control Board regarding the implementation of the 911 system in this State.

Consistent with such, there does not appear to be any basis for West Columbia to have funds remitted by a service supplier inasmuch as there is no approved system plan or ordinance establishing a West Columbia 911 system. Moreover, consistent with the policy of the Budget and Control Board, no adoption of an ordinance by West Columbia would be in order. As a result, I am unaware of any basis for any additional monthly charge to consumers in West Columbia. As to your question regarding whether Lexington County would be required to provide previously collected funds to West Columbia, I am similarly unaware of any basis for such a claim to these funds by West Columbia. I was informed by an individual with the Budget and Control Board that inasmuch as West Columbia's PSAP or call center is considered part of the Lexington County plan, that call center should have been funded by Lexington County. If that is not the case, you should contact the Board for their review of your particular situation.

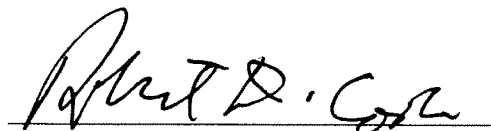
If there are any questions, please advise.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General

cc: Jim Rion, Esquire