



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 9, 2000

Jack M. Scoville, Jr., Esquire
Georgetown County Attorney
Post Office Drawer 1250
Georgetown, South Carolina 29442

RE: Informal Opinion

Dear Mr. Scoville:

Your opinion request has been forwarded to me for reply. You have asked whether 911 charges may be used to support outbound communications as well as inbound communications. In your request letter, you state the following:

Georgetown County Council is considering enacting an ordinance to charge a fee for 911 services pursuant to §23-47-10, et. seq., of the South Carolina Code. Georgetown County presently has an enhanced 911 system. It would be the intent of County Council to use the new 911 tariff charges to further enhance the 911 system in use in the county. Enhancement would include the purchase and installation of the infrastructure for an 800-megahertz radio system. This would consist of the antennas, coaxial cable, radio infrastructure equipment, heating and air conditioning systems for a building to house the new equipment and a generator for auxiliary power. The 911 funds would also be used to pay for tower usage for antennas as well as a maintenance contract for the new equipment. Also, insurance for the new equipment would be paid out of the 911 funds. In summary, the 911 tariff charges would be used only to support 911 public safety communications activities alone; such funds would be used only if the volume of emergency response activities is predominant; and the cost of the system will be evaluated on the basis of comparative costs, adequacy, and similar factors.

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LAW/ANALYSIS

The Public Safety Communications Center Act (hereinafter the "Act") is found in Section 23-47-10 et seq. of the South Carolina Code of Laws. The Act sets forth, among other things, system requirements and funding. Pursuant 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 shall conform to the planning guidelines set forth in this chapter, guidelines promulgated by DIRM, and meet the requirements of current tariffs applicable to the 911 system. ...

This Office, as a matter of policy, typically defers to the administrative interpretation of the agency charged with the enforcement of the statute in question. Op. Atty. Gen. dated November 25, 1998. As we have emphasized in earlier opinions "construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons." Op. Atty. Gen. dated October 20, 1997, quoting Logan v. Leatherman, 290 S.C 400, 351 S.E.2d 146 (1986). Where the 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). If the administrative interpretation is reasonable, courts will defer to that construction even if it is not the only reasonable one or the one the court would have adopted in the first instance. Op. Atty. Gen. dated March 12, 1997.

I have discussed this matter with the Division of Information Resource Management (hereinafter "DIRM"). Counsel for DIRM has provided me with a letter dated June 25, 1992, from Ted L. Lightle, Director, DIRM, to Mr. Wade Palmer. Counsel has informed me that this letter sets forth DIRM's administrative interpretation of the Act in regards to questions such as yours. This letter provides in pertinent part as follows:

We agree in principle with the proposition that 911 charges can support dispatch or outbound communication activities and expenses. This conclusion is supported by §23-47-20(C)(2) of the Public Safety Communications Center Act (the Act) which provides as follows:

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As a minimum, the 911 systems implemented in South Carolina must include . . . equipment to connect the PSAP to all law enforcement, fire protection, emergency medical or rescue agencies, or both within the boundaries of the system;

Plainly, that being a requirement, 911 charges could appropriately be expended for these activities. This is fortified by §23-47-40(B)(5) which provides that:

Funding must be used only to pay for the following enumerated items ... items necessary to meet the standards outlined in this chapter, specifically in §23-47-20(C);

These provisions of the law, however, carry with them certain limitations which must be adhered to in order for the spirit and intent of the law to be satisfied. Those limitations are:

1. The 911 charge expenditures for outbound communications must be restricted to use for expenses attributable to 911 (emergency response) calls. Otherwise stated, it would be impermissible to use 911 charges for the construction and/or maintenance of an outbound communications system used for all forms of public communications such as code inspection activities and/or road crew assignments. Rather, if 911 charges are used, the expenditures should be limited to supporting 911 public safety communications activities alone;
2. Some significant portion of traffic on any outbound communication system utilized by such agencies as law enforcement, and EMS, include non-emergency communications such as the whereabouts of officers, information regarding breaks, destinations, and the like. That is to say, once such a system is put in place, it will be the backbone method of communicating in many environments. Consequently, in addition to the limitation that such 911 charge funded communications

systems must be used only for public safety activities, there is a second limitation that the emergency response traffic must be the predominant type of all traffic. It is not necessary that the call come in on a "911" line (it could come in on a seven (7) digit number) but the 911 charges could not permissibly be used to sustain all costs of a system where emergency response was not the predominant use. Concededly, determining which part of the traffic is emergency response related is not an easy proposition. However, we have made inquiries with older 911 systems in the State and they have been able to provide us with general information concerning the proportion of traffic which is emergency response and that which is other types of traffic. I would ask that you supply me with a statement regarding the breakdown of traffic in Dorchester County, and describe the method and means by which this determination was made. Generally speaking, we need to be advised whether emergency response traffic is the predominant (more than 50%) type of traffic which would be carried over this outbound communications system; and

3. The cost of such a system should be compared to other methods of providing outbound communications. Also, recognizing that the first link in a "PSAP-out" connection is going to be from the PSAP to the law enforcement, fire or EMS contact point, such a radio communication system perhaps should be installed at a more centralized location to eliminate the need for land based links between the PSAP and the emergency response unit. Therefore, evaluations and analyses should be conducted, and submitted to this office, comparing methods, locations and the related costs of alternate outbound communications systems to determine the reasonableness and economies of the proposed method.

In summary, this Division agrees with the proposition that 911 charges can be applied to the cost of outbound communications. There are, however, certain

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limitations upon the application of those funds such that they can only be applied to emergency response activities, the 911 charges should be used only if the volume of emergency dispatch activities to all other traffic over the system is predominant, and the cost of such a system should be compared with other means of outbound communication methods and evaluated on the basis of comparative costs, adequacy, and similar factors.

After thoroughly reviewing the Act, I cannot conclude that DIRM's long-standing administrative interpretation is unreasonable. Therefore, in light of Office policy, we will defer to DIRM's administrative interpretation of the Act as it relates to your question. As to the specific details of the County's plan, I would recommend that you contact DIRM to determine whether the plan is acceptable under their interpretation of the Act.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch
Assistant Attorney General