

85-00421

# OFFICE OF THE ATTORNEY GENERAL



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JUL 1 1985

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Honorable Victor Gaston  
Member House of Representatives  
District 100  
864 West Parkwood Drive  
Mobile, Alabama 36608

Counties - Telephone -  
Assessments - Privacy

The Mobile County Emergency Telephone Communication District Board of Commissioners has the inherent authority to collect delinquent emergency telephone service charges.

The provision of a list of subscribers delinquent in the payment of emergency telephone service charges to the Communication District Board of Commissioners by a local telephone company is not in violation of any Federal Act. Furthermore, the required provision of such list is within the police powers of the State.

The Mobile County Emergency Telephone Communication District is an autonomous body and complaints against the E-911 system should be filed with the District.

Dear Representative Gaston:

This is in response to your recent request for an Attorney General's opinion regarding the implementation of

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the E-911 system in Mobile County. You specifically requested how collection of the emergency telephone service charge authorized by the Alabama Legislature in Act 84-369 (the Act) could be enforced, and by whom, if the provision of a delinquent subscriber list to the Mobile County Emergency Telephone Communication District Board of Commissioners by each local telephone is in violation of the Privacy Act and/or any Communication Act, if the Board of Commissioners is an autonomous body with separate legal authorities and against whom would citizens have recourse relative to use of the E-911 system.

The Alabama Legislature enacted Act 84-369 to authorize any county or municipal governing body to create, by ordinance, a communication district within the jurisdiction of such municipality or county for the purpose of establishing a local emergency telephone service or E-911 system. In order to fund such communication district the Legislature provided for the levying of an emergency telephone service charge to be included in the billing by the local telephone company, or companies, serving within the communication district.

Since section 3(B)(1) of the Act authorizes the Board of Commissioners to levy an emergency telephone service charge, inherent with such authority is the authority to enforce collection. Since the Act does not specifically provide for methods of enforcement, the Board would follow normal collection procedures for amounts owed a political subdivision of the state.

Section 3(B)(4) of the Act provides that each local telephone company shall provide the Communication District's Board of Commissioners a list of subscribers delinquent in the payment of emergency telephone service charges. The validity of such provision rests not only upon whether it is in violation of any Federal Act, but also upon whether or not it is within the police power of the state.

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The Federal Privacy Act applies only to agencies of the United States Government. Polchowski v. Gorris, 714 F.2d 749 (USDC, Ill., 1983). Therefore, the provision of a delinquent subscriber list pursuant to Section 3(B)(4) of the Act would not be in violation of the Federal Privacy Act. Furthermore, the provision of such delinquent subscriber list would not be in violation of any communication act.

The state has inherent police power which it may utilize to abrogate fundamental rights, such as the right to privacy, in order to advance a compelling state interest. Roe v. Conn., 417 F.Supp. 769, (D.C. Ala., 1976). Section 2 of the Act states that the provision of a single, three-digit emergency telephone number would simplify the means of procuring emergency services, and thereby, result in "a saving of life, reduction in the destruction of property, quicker apprehension of criminals and ultimately the saving of monies." The provision of such emergency telephone number, and thereby, the preservation of health and safety of its citizens, is clearly a compelling state interest. Furthermore, the provision of a delinquent subscriber list bears a fair and substantial relation to the objectives of the legislature to preserve the health and safety of citizens, in that adequate funding must be assured in order for such objectives to be realized. Given the above, although the provision of a delinquent subscriber list may indirectly interfere with the fundamental right of privacy, the required provision of such list is within the police power of the state.

As provided in the Act, the Communication District is a self-governed political and legal subdivision of the state with the power and authority to levy emergency telephone assessments and issue its own debt. Therefore, in that the Communication District is an autonomous body, citizens utilizing the E-911 service would file any complaint arising out of the use of such service with the District.

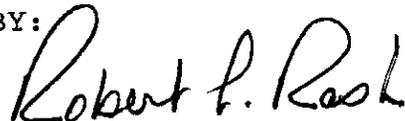
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We hope our response has addressed your concerns.  
Should you require additional information, please advise.

Sincerely,

CHARLES A. GRADDICK  
ATTORNEY GENERAL

BY:

A handwritten signature in cursive script that reads "Robert L. Rash". The signature is written in black ink and is positioned to the right of the typed name "ROBERT L. RASH".

ROBERT L. RASH  
ASSISTANT ATTORNEY GENERAL

CAG:rlr:s