OFFICE OF THE ATTORNEY GENERAL

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Honorable Tom Tate, Member
Honorable Jack Weaver, Member
Monroe County E911 Board of Commissioners
P.O. Box 117
Monroeville, AL 36461

Emergency Management Communications District - Telephones - Settlements - Tariff Rates

Emergency Management Communications District Board may modify charge so long as it is no more than that authorized in the referendum required by Section 11-98-5. Board may agree to settle litigation. Boards serving adjacent districts should work together to provide most effective service.

Dear Mr. Tate and Mr. Weaver:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. Under the E-911 Act and amended act of the Alabama Legislature, can the monthly fees of phone subscribers in Monroe County, Alabama, be increased without the vote of the people? If so, can the E-911 Board of Commissioners increase the monthly fee, or does the appointing authority, i.e., the Monroe

County Commission, have the authority to increase the fee?

2. The Monroe County E-911 Board of Commissioners has employed independent counsel to represent the Board in civil matters relating to the embezzlement of the funds. Does the E-911 Board of Commissioners have the authority to accept a settlement agreement between the Board's counsel and counsel for a banking institution regarding civil litigation with the said banking institution, since criminal prosecution is proceeding against the CPA with little hope of immediate restitution or recovery?

3. Does the Monroe County E-911 Board of Commissioners have to provide service to the Packers Bend community of Northwest Monroe County, Alabama, which is located west of the Alabama River?

FACTS, LAW AND ANALYSIS

In your requesting letter you have provided us with the following facts:

> Approximately two weeks before the E-911 Board of Commissioners began online service to the citizens of Monroe County, Alabama, it was discovered by the Board that the CPA firm retained to handle all accounting practices had apparently misappropriated the accumulated funds of the Board. Since that time the CPA has been indicted, and the Department of Examiners of Public Accounts is in the process of performing an audit. It appears that approximately $142,000.00 was misappropriated and is missing and further can be linked to the indicted accountant. At the time that this irregularity was discovered the balance of the funds in the account was approximately $200.00. At the present time the Board has a monthly income of $8,800.00, generated

> from the $.74 charge on each phone in service in Monroe County, Alabama. Monthly operations cost will run approximately $11,500.00 a month. The E-911 Board of Commissioners plans were to use approximately $3,000.00 a month from the accumulated funds to meet operating expenses for each month. This would operate the system for approximately three (3) years without an increase in revenue to the Board from phones used in the County.
>
> The Packers Bend community is separated geographically from the other parts of Monroe County by the Alabama River and all emergency services of this area, with the exception of the Monroe County Sheriff's Department, are provided by agencies from Thomasville, Alabama. Residents of this area at the present time dial 911 and are connected with the Thomasville Police Department. Thomasville, Alabama, is only twelve (12) miles from the Packers Bend community. The only reliable transportation route from Monroeville to Packers Bend, Alabama, is 65 plus miles. The Monroe County E-911 Board of Commissioners has never collected any fee from the phone subscribers in this community. It is our belief that by connecting Packers Bend into the Monroe County E-911 system this would be a disservice rather than a service to the citizens of this community.

We further understand that the referendum held pursuant to § 11-98-5(a), Code, authorized the levy of an emergency telephone service charge in an amount not to exceed five percent of the local tariff rates charged in the district, and that the $.74 charge is less than the amount authorized by the referendum.

Section 11-98-5(b) authorizes reduction, suspension, or reestablishment of the service charge rate so that the district can be properly funded. Accordingly, it is the opinion of this office that the Board has considerable latitude in setting the service charge below the authorized

amount. It should be uniformly applied throughout the district ". . . in conformity with the availability of such service in any area of the district."

In Section 11-98-2, Code, we find that communications districts have ". . . power to sue and be sued. . . ." Attendant with such power is the authority to settle litigation. Our caveat in this specific case is that any such settlement should not include terms that might jeopardize the criminal prosecution. Of course, if the criminal prosecution were to be successful, the district attorney should insist upon restitution being ordered.

In an opinion to the Honorable Joe S. Pittman, dated January 11, 1991, A.G. No. 91-00150, we said:

> "This office wishes to encourage communications districts created by municipalities within a county to cooperate and work with communications districts created by the county, and districts created by a county to cooperate with municipal communications districts and districts created by other counties, all for the purpose of providing a single emergency number through which emergency services can be quickly and effectively obtained in order to shorten the time required for a citizen to request and receive emergency aid."

This applies to your third question. The Monroe County E911 Board should work with its counterparts in Clarke County in order to provide the most effective emergency service to the residents of the District.

CONCLUSION

Under the statutes pursuant to which the Emergency Management Communications District is established, its governing board may modify the service charges authorized so long as the maximum authorized by the required referendum under § 11-98-5 is not exceeded.

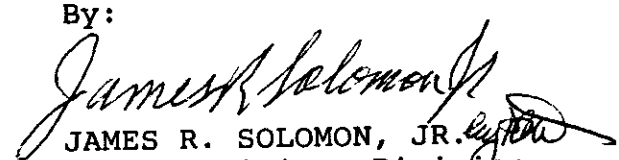
The governing board of the EMCD has the authority to negotiate through counsel to accept a settlement agreement regarding civil litigation to which it is a party.

The governing boards of EMCDs that provide service to adjacent areas should work together, and be alert to ways to improve the efficiency and effectiveness of their services. If an isolated area within the jurisdiction of one District could be better served through the activities of an adjacent District, the two boards should work out the means to provide such service.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact Philip C. Davis of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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