2013-064

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

August 27, 2013

Honorable James T. Sasser
Attorney, Alabama Statewide 911 Board
1678 Montgomery Highway #104 PMB 345
Birmingham, Alabama 35216

Alabama Wireless 911 Board – Emergency Telephone Service – Fees – Taxes – Federal Agencies

Alabama law does not exempt instrumentalities of the United States from the statewide 911 charge imposed by section 11-98-5 of the Code of Alabama. Whether they are exempt pursuant to federal law is not addressed.

Dear Mr. Sasser:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Statewide 911 Board.

QUESTION

Are instrumentalities of the United States exempt from the statewide 911 charge set forth in section 11-98-5 of the Code of Alabama?

FACTS AND ANALYSIS

Act 2012-293, signed into law by the Governor on May 8, 2012, and now codified at section 11-98-1, *et seq.*, of the Code of Alabama, made substantial changes to Alabama E-911 services in Alabama. Ala. Code § 11-98-1 to § 11-98-15 (Supp. 2012); *see, generally*, opinion to Honorable Jay Murrill, Attorney, The Jefferson County 911 Emergency Communications District, dated September 5, 2012, A.G. No. 2012-084.

Pursuant to these amendments, section 11-98-5 of the Code provides, effective October 1, 2013, as follows:

> "[a] single, monthly statewide 911 charge shall be imposed on each active voice communications service connection in Alabama that is technically capable of accessing a 911 system. ... The statewide 911 charge is payable by the ***subscriber*** to the voice communications service provider. ... The statewide 911 charge shall be uniformly applied and shall be imposed throughout the state, and shall replace all other 911 fees or 911 taxes."

ALA. CODE § 11-98-5(a) (Supp. 2012) (emphasis added).

Prior to the amendments, section 11-98-1 of the Code exempted persons "otherwise exempt from taxation" from payment of the 911 service charge. ALA. CODE § 11-98-1(8) (2008). Because the federal government is generally exempt from taxation, the federal government was also exempt from the 911 service charge. Opinion to Steven R. Ballard, Chief Financial Officer, DeKalb County Commission, dated September 6, 1991, A.G. No. 91-00400.

The amended section 11-98-1 of the Code, however, now states, in part, as follows:

> [P]rovided, however, that for purposes of the imposition and collection of the statewide 911 charge the term subscriber shall not include the State of Alabama, the counties within the state, incorporated municipalities of the State of Alabama, county and city school boards, independent school boards, and all educational institutions and agencies of the State of Alabama, the counties within the state, or any incorporated municipalities of the State of Alabama.

ALA. CODE § 11-98-1(16) (Supp. 2012). Accordingly, the State of Alabama, counties, municipalities, school boards, educational institutions, and agencies of the State of Alabama are exempt from the statewide 911 charge regardless of tax exempt status. This section makes no provision for the exemption of instrumentalities of the United States.

The federal government may, however, be exempt from the 911 service charge under principles of federal law. This Office does not generally address questions of whether federal law may preempt state fees. Opinion to Honorable Don Davis, Mobile County Probate Judge, dated December 26, 2007, A.G. No. 2008-023. Nonetheless, it is generally accepted that the United States and its instrumentalities are exempt from ***taxation*** by state governments. *Ballard* at 2 (emphasis added), *citing*, *M'Culloch v. State of Maryland*, 17 U.S. 316, 4 L. Ed. 579 (1819) and *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 98 L. Ed. 546, 74 S. Ct. 403 (1954). Moreover, the Comptroller General of the United States has previously determined "that the Alabama 911 service charge and the utility service use tax are both vendee ***taxes*** . . . and that the federal government is therefore constitutionally immune from these ***taxes***." Op. U.S. Comptroller Gen., No. B-300737 (June 27, 2003) (emphasis added). Recently, however, the Alabama Supreme Court, has held that 911 service charges are not taxes. *T-Mobile South, LLC v. Bonet,* 85 So. 3d 963, 984-985 (Ala. 2011), relying on, *Madison County Communications District v. BellSouth Telecommunications, Inc.*, Civil Action 06-S-1786-NE (N.D. Ala., decided April 15,2009) (unpublished memorandum).

CONCLUSION

Alabama law does not exempt instrumentalities of the United States from the statewide 911 charge imposed by section 11-98-5 of the Code. Whether they are exempt pursuant to federal law is not addressed.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

LS/BB
1606421/172025