S T A T E O F T E N N E S S E E
OFFICE OF THE
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February 4, 2013

Opinion No. 13-09

Ambulance Service Fees

QUESTIONS

1. Under what circumstances are counties empowered to charge franchise or other fees to private ambulance services: (a) based within the county as a whole; (b) based within a municipality in the county; and (c) based outside the boundaries of the county?

2. What types of franchise or other fees, such as a flat fee per call, a percentage of gross billings, or a fixed annual or other periodic fee, are permissible for counties to charge privately owned and operated ambulance services?

3. How are such fees established?

4. To whom are such fees paid?

5. How are such fees collected in the event of a failure to pay the fee?

6. Is a municipality empowered to require and charge the same or different franchise or other fees to a county-authorized ambulance service operating within the corporate limits of the municipality if the county-authorized ambulance service is not based within the corporate limits of the municipality?

7. Is a county empowered to require and charge the same or different franchise or other fees to a municipality-authorized ambulance service operating within the corporate limits of the county under the following circumstances: (a) the municipality-authorized ambulance service is based within the corporate limits of the municipality or (b) the municipality-authorized ambulance service is not based within the corporate limits of the municipality?

8. Are there any distinctions or differences in the above answers if the private ambulance service is a for-profit rather than a not-for-profit ambulance service?

OPINIONS

1. A county may establish the payment of any reasonable fee by a private ambulance service authorized to operate within the county's boundaries, regardless of where the ambulance service provider is based.

2. A county may establish any fee that is reasonably related to the regulation of the ambulance provider, including the defrayment of the county's costs in regulating the ambulance provider.

3 & 4. A county's governing body regulates ambulance services, including setting ambulance service fees. Those fees are collected pursuant to the rules and regulations adopted by the governing body.

5. Counties may enforce any ordinance, rule or regulation by fines, forfeitures, penalties, or proceedings in any court of competent jurisdiction.

6 & 7. A municipality or county-authorized ambulance service may only provide service within the boundaries of another municipality or county with the approval of that municipality's or county's governing body. Should a municipality or county enter into an agreement with one or more contiguous municipalities or counties to jointly provide for ambulance services in their respective jurisdictions pursuant to Tenn. Code Ann. § 7-61-104(b), then the terms governing how such services are to be provided should be set forth in that interlocal agreement. Such terms may address any franchise fees to be paid by the ambulance provider to any municipality or county in which the provider is operating and the amounts to be paid to the ambulance provider for its services.

8. No. Tenn. Code Ann. § 7-61-103 does not differentiate between for-profit and not-for-profit private ambulance service providers.

ANALYSIS

1. The provision of ambulance services by a Tennessee county or city is governed by Tenn. Code Ann. §§ 7-61-101 to -104. The governing body of any Tennessee county or city may "provide and maintain and do all things necessary to provide ambulance service as a public service." Tenn. Code Ann. § 7-61-102. S*ee also Morristown Emergency and Rescue Squad, Inc. v. Volunteer Dev. Co., Inc.*, 793 S.W.2d 262, 264 (Tenn. Ct. App. 1990). To this end, a county or city may "license, franchise, or contract for private operators … to provide ambulance services." Tenn. Code Ann. § 7-61-103. The governing body may also adopt and enforce reasonable regulations to control the private or nonprofit ambulance service. *Id*. In so doing, the county may charge to the provider of ambulance services a franchise fee that is reasonably related to the regulation of the ambulance provider, including defrayment of the costs of regulating the ambulance provider. *See id. See also Fowler v. Warren County*, No. M2007-01004-COA-R3-CV, 2008 WL 204118, at *1 (Tenn. Ct. App. Jan. 24, 2008).

A city or county may not extend ambulance services within the boundaries of another city or county without the approval of that city's or county's governing body. Tenn. Code Ann. § 7-61-104(a) provides:

> No county may provide and maintain, license, franchise, or contract for ambulance service within the boundaries of a city or another county, and no city may provide and maintain, license, franchise, or contract for ambulance service outside its corporate boundaries, without the approval of the governing body of the area to be served.

Thus, in accordance with Tenn. Code Ann. § 7-61-104(a), a county may not provide and maintain an ambulance service within the boundaries of a city in or outside the county, or within the boundaries of another county, without the consent of that city's or county's governing body. Pursuant to Tenn. Code Ann. § 7-61-104(b), counties and cities may enter agreements with each other to permit joint or cooperative action to provide for ambulance services in their respective jurisdictions. Tenn. Code Ann. § 7-61-104(b) specifically states:

> (b)(1) Except as provided in subdivision (b)(2), any two (2) or more counties and municipalities may enter into agreements with each other and with persons providing both emergency and nonemergency ambulance service for a county or counties on a county-wide basis, for joint or cooperative action to provide for ambulance service as authorized in this chapter.
> (2) In any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), or in any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000), according to the 1990 federal census or any subsequent federal census, any two (2) or more counties and municipalities may enter into agreements for joint or cooperative action to provide for ambulance service as authorized in this chapter.

Any joint agreement between one or more contiguous cities and counties to maintain and provide ambulance services in their respective jurisdictions would be in the form of an interlocal agreement or compact as set forth by Tenn. Code Ann. §§ 5-1-113 to -114. *See also* Tenn. Att'y Gen. Op. 08-148 (Sept. 18, 2008); Tenn. Att'y Gen. Op. 03-073 (June 10, 2003).

2. As discussed above, Tenn. Code Ann. § 7-61-103 grants counties the authority to license, franchise, or contract for privately owned and operated ambulance services and to regulate their use. Tenn. Code Ann. § 7-61-104 provides that "[i]n order to protect the public health and welfare, any county or city may adopt and enforce reasonable regulations to control the provision of private or nonprofit ambulance service." To this end, counties may adopt regulations and require the payment of fees by the ambulance service provider. *See Fowler*, 2008 WL 204118, at *1.

As the *Fowler* court noted, the fee must be an actual fee and not a tax. *Id*. Tennessee courts have recognized that a "tax is a revenue raising measure levied for the purpose of paying the government's general debts and liabilities" whereas a "fee is imposed for the purpose of regulating a specific activity or defraying the cost of providing a service or benefit to the party paying the fee." *City of Tullahoma v. Bedford County*, 938 S.W.2d 408, 412 (Tenn. 1997). S*ee also Fowler*, 2008 WL 204118, at *2; *Gray's Disposal Co., Inc. v. Metro. Gov't of Nashville*, 122 S.W.3d 148, 159 (Tenn. Ct. App. 2002).

Any fee imposed must be reasonable. Tenn. Code Ann. § 7-61-103 states that "in order to protect the public health and welfare, any county or city may adopt and enforce *reasonable* regulations to control the provision of private or nonprofit ambulance service" (emphasis added). *See also Fowler*, 2008 WL 204118, at *2. To establish reasonableness, "it is only required that the fees bear some reasonable relation to the expenses involved and it is no objection to a regulatory license that it produces more income than is required for its administration and enforcement." *S & P Enterprises, Inc. v. City of Memphis*, 672 S.W.2d 213, 216 (Tenn. Ct. App. 1983). S*ee also Fowler*, 2008 WL 204118, at *2.

3 & 4. The governing body of a county may adopt and enforce reasonable regulations providing for ambulance services, including the payment of any reasonable fee to a city or county by an ambulance provider operating in its jurisdiction. Tenn. Code Ann. § 7-61-103. Such rules might also be incorporated in any interlocal agreement executed between one or more contiguous cities and counties to provide ambulance services in their respective jurisdictions. *See* Tenn. Code Ann. §§ 5-1-113 to -114 & 7-61-104. As this Office has previously opined:

> Under Tenn. Code Ann. § 7-61-104, in Davidson and Shelby Counties, any two or more counties and municipalities may enter into agreements for joint or cooperative action to provide for ambulance service authorized under Tenn. Code Ann. §§ 7-61-102 and -103. No county or city may set standards less stringent than state standards adopted under Tenn. Code Ann. §§ 68-140-501, *et seq*. Tenn. Code Ann. § 68-140-506(g). These standards do not address ambulance fees. But the Division of Emergency Services within the Tennessee Department of Health charges licensing, permitting, and certification fees to ambulance service providers. Tenn. Code Ann. § 68-140-517; Tenn. Rules and Regulations Ch. 1200-12-1-.06. These fees, if applicable, would be part of an ambulance provider's costs and, presumably, reflected in service fees. If the city or county provides ambulance service directly, the governing body of the city or county would set the fees. Where the county or city licenses, franchises, or contracts with a private entity to provide the service, the local government could regulate fees under its service contract or franchise agreement, or through licenses.
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> The second question is what role the State plays in regulating fees. Under current law, these fees are set by the local governing bodies providing or contracting for the service . . . Fees for ambulance service in Shelby County would be set by the county if it provides the service directly, through its service contract or franchise agreement with a private entity to provide the service, or under licenses it might issue to private ambulance services or regulations it might adopt to govern provision of ambulance service. If the county has entered into an interlocal agreement with other counties or with cities, then fees would be set under that agreement. Under current law, no state agency plays a direct role in setting county . . . ambulance service fees.

Tenn. Att'y Gen. Op. 08-148 at 2.

5. The next question posed is how any fees assessed against an ambulance service are collected. Tenn. Code Ann. § 7-61-103 provides that "any county or city may adopt and *enforce* reasonable regulations to control the provision of private or nonprofit ambulance service" (emphasis added.) The statute is silent as to specific means of enforcement.

However, under Tenn. Code Ann. § 5-1-118(a) a county, by resolution of its legislative body, may exercise certain powers granted to municipalities, including the enforcement of the county's rules and regulations. Specifically, a county may "[e]nforce any ordinance, rule or regulation by fines, forfeitures and penalties, and by other actions or proceedings in any court of competent jurisdiction." Tenn. Code Ann. § 6-2-201(28)(A).

For example, in the previously referenced *Fowler* case, the Circuit Court for Warren County enjoined a private ambulance service from doing business for failure to pay fees imposed by the county on ambulance service providers. *Fowler*, 2008 WL 204118, at *1. Likewise, the Hamblen County Chancery Court permanently enjoined an unfranchised ambulance service from operation. *Morristown Emergency and Rescue Squad, Inc.*, 793 S.W.2d at 263. Although the issue in *Morristown* involved ambulance service franchises rather than ambulance service franchise fees, the analysis is the same.

6 & 7. The next questions concern the amount and type of fees that a county or municipality may impose upon an ambulance provider operating within its boundaries, where the ambulance provider may or may not be based in the municipality or county. Contiguous counties and municipalities are free to enter into agreements with each other and with those providing ambulances services. *See* Tenn. Code Ann. § 7-61-104. But if a county or municipality wishes to maintain, license, franchise, or contract for ambulance services that extends beyond the municipality's or county's boundaries or into the boundaries of a municipality within a county, then that municipality or county must obtain formal approval through an agreement with the governing body of the other municipality or county. *See* Tenn. Att'y Gen. Op. 08-148 at 2: Tenn. Att'y Gen. Op. 03-073 at 1-2. The statute does not set or limit the type or amount of franchise or other fees a governing body may charge nor does it make a distinction about who owns the ambulance service or where it is located, although as previously discussed franchise fees must be reasonably related to the regulation of the ambulance service. Furthermore, if ambulance providers are placed in different classifications for purposes of establishing the franchise fee to be paid and each classification pays a different fee, then a reasonable basis must exist for the classification to avoid a violation of equal protection guarantees under the federal and Tennessee Constitutions. *See, e.g., Gray's Disposal Co., Inc. v. Metropolitan Government of Nashville*, 122 S.W.3d 148, 161-64 (Tenn. Ct. App. 2002). A reasonable basis exists for a legislative classification "if any state of facts may reasonably be conceived to justify it." *Id.* at 163 (quoting *Tennessee Small School Sys. v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993)). As regards any payments for the services actually provided by the ambulance company to a county or city, counties and municipalities are generally free to negotiate whatever terms they desire for the provision of such ambulance services.

8. Finally, these statutes make no distinction between for-profit and not-for-profit private ambulance services. *See* Tenn. Code Ann. § 7-16-103 (stating "[t]he governing body of any county or city may license, franchise, or contract for private operators or nonprofit general welfare corporations to provide ambulance service"). Therefore, the analysis above is equally applicable to for-profit and not-for-profit ambulance service providers.

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