State of West Virginia
Office of the Attorney General

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The Honorable James W. Courrier, Jr.
Prosecuting Attorney
Mineral County
P.O. Drawer 458
Keyser, WV 26726

Dear Prosecutor Courrier,

You have asked for a second Opinion of the Attorney General about whether the Mineral County Ambulance Authority's practices comply with the Emergency Ambulance Service Act of 1975, W. Va. Code § 17-15-1 *et seq.* (the "Act"). This Opinion is being issued pursuant to West Virginia Code § 5-3-2, which provides that the Attorney General "may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office." To the extent this Opinion relies on facts, it is based solely on the factual assertions set forth in your recent correspondences with the Office of the Attorney General.

According to your letters, Mineral County Commissioner Richard Lechliter has been discussing with you the prospect of revising the by-laws of the Mineral County Ambulance Authority. Your initial letter, to which we responded with a formal Opinion on July 8, 2014, sought advice from this Office regarding a wide-ranging series of questions raised to you by Commissioner Lechliter. The most recent letter, which is the subject of this Opinion, seeks advice regarding two follow-up questions posed to you by the Commissioner. We hope that we have been able to provide you the guidance you require to be responsive to the Commissioner.

You letter raises two legal issues, which are addressed in turn below:

> *(1) May an ambulance authority form a "secondary Board within the Board" to make decisions about the placement of new ambulances and major repairs or replacement of equipment on individual ambulances? (2) May ambulance authority squads use private billing companies to charge users for services rendered?*

As in our previous Opinion, this Opinion focuses only on the application of and compliance with the Act. We do not address compliance with other aspects of West Virginia law, including other statutes or any applicable agency regulations.

Question One: May an Ambulance Authority Form a "Secondary Board Within the Board" to Make Decisions About the Placement of New Ambulances and Major Repairs or Replacement of Equipment on Individual Ambulances?

An ambulance authority has broad discretion over the personal property it owns and uses for the purpose of providing emergency ambulance service. As we previously noted, "no provision of the Act places any restrictions on how an authority is to select, allocate, replace, or mark its ambulances, so long as the authority continues to effectively fulfill its mission." Opinion of the Attorney General's Office Regarding Whether a County Ambulance Authority's Practices Comply with the Emergency Ambulance Service Act of 1975, W. Va. Code § 7-15-1 *et seq.* (July 8, 2014), at 6-7, available at http://www.ago.wv.gov/publicresources/Attorney%20General%20Opinions/Pages/default.aspx. We read the Act "to grant ambulance authorities a wide berth with respect to the ownership and management of personal property, including ambulances." *Id.* at 6.

The Act suggests, however, that the authority's discretion is entrusted to the board *as a whole*. "The management and control of an authority, its operations, business and affairs shall be lodged *in a board* of not less than five nor more than fifteen individuals." W. Va. Code § 7-15-5 (emphasis added). Furthermore, each "member of the board shall have one vote on *all matters* coming before it." *Id.* (emphasis added). Consistent with that, "[a]ll regular meetings shall be general meetings for the consideration of any and all matters which may properly come before an authority." *Id.* § 7-15-7. For any special meeting, notice of the time, place, and matters to be considered must be specifically provided to "*all* the members." *Id.* (emphasis added). We believe these provisions of the Act clearly contemplate that the board as a whole—with each member having the opportunity to participate and vote—must act on "any and all matters" concerning the authority, including any decisions concerning ambulances.

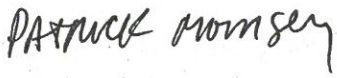
Question Two: May Ambulance Authority Squads Use Private Billing Companies to Charge Users for Services Rendered?

The Act permits an ambulance authority to use a billing provider. We previously based this conclusion on two provisions in the Act. *First*, an authority may "employ, in its discretion, planning consultants, attorneys, accountants, superintendents, managers and such other employees and agents as may be necessary in its judgment and fix their compensation." *Id.* § 7-15-10(d). *Second*, an authority may "enter into contracts and agreements for superintendence and management services." *Id.*

In general, an ambulance authority appears to have wide latitude to choose the manner and methods of fulfilling its mission. The Act specifically provides an authority the ability to "do all things necessary and convenient to carry out the powers given in this article unless otherwise forbidden by law." *Id.* § 7-15-10(l). Together with the provisions cited immediately above, it seems clear that the Legislature intended for an ambulance authority to have significant

discretion to delegate responsibilities as necessary, subject to certain conflict of interest provisions. *See, e.g.*, *id.* § 7-15-15.

Sincerely,



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