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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Communications Districts – Emergency
Management Communications – Districts –
Funds – 911 Fund – Alabama Wireless 911
Board – Mobile County

The Mobile County Communications District (“District”) is entitled to receive 100 percent of its initial base distribution amount for each fiscal year beginning October 1, 2013, payable in 12 equal monthly installments. Because of collection and remission delays contemplated by section 11-98-5.2 of the Code of Alabama, however, distributions from the Statewide 911 Board to the District may be made in the following fiscal year.

Dear Sirs:

This opinion of the Attorney General is issued in response to your requests. Because both of your requests relate to the same subject matter, the responses to your requests have been consolidated into a single opinion.

QUESTIONS

(1) Are emergency communications districts entitled to receive 100 percent of their base distribution amount for each fiscal year beginning October 1, 2013, payable in 12 equal and monthly installments?

(2) Is the Alabama Statewide 911 Board required to ensure that payments made to each communications district between December 2013 and September 30, 2013, equal the initial base distribution amount for the entire fiscal year?

FACTS AND ANALYSIS

Based upon your requests and subsequent conversations with this Office, it is apparent that both the Mobile County Communications District and the Alabama Statewide 911 Board (“Board”) are essentially asking this Office for guidance on the appropriate timing of distributions from the Board to the District.

As this Office has previously observed, “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.” Opinion to Honorable James T. Sasser, Attorney, Alabama Statewide 911 Board, dated August 27, 2013, A.G. No. 2013-064. One of the intended purposes of the act, as stated in the preamble thereto, was to “create a statewide 911 Board, which shall replace and supersede the existing Commercial Mobile Radio Service Board and which would be responsible for establishing and collecting an emergency telephone service charge [and] . . . *distribut[ing] the funds collected from the service charge to communications districts and CMRS providers. . . .*” Opinion to Honorable James T. Sasser, Attorney, Alabama Wireless 9-1-1 Board, dated March 19, 2013, A.G. No. 2013-036 (emphasis added).

The Board was created effective July 1, 2012, and charged with the duty to “plan for the implementation of the statewide 911 charge and the distribution of the revenues as provided [in the act].” ALA. CODE § 11-98-4.1(a) (Supp. 2013). The duties of the Board also include the duty to administer the 911 Fund and the monthly statewide 911 charge and the duty to distribute revenue in the 911 Fund in accordance with the act. ALA. CODE § 11-98-4.1(e)(2)-(3) (Supp. 2013). The Board has the authority to adopt rules in accordance with Administrative Procedure Act to implement the act. ALA. CODE § 11-98-4.1(e)(8) (Supp. 2013). Additionally, the Board may “take other necessary and

proper action to implement this chapter.” ALA. CODE § 11-98-4.1(e)(9) (Supp. 2013).

Section 11-98-5.2 of the Code requires the Board to make distributions to districts from “moneys then on deposit in the 911 fund . . . of the statewide 911 charges remitted to the 911 Board with respect to the month. . . .” ALA. CODE § 11-98-5.2(b)(1) (Supp. 2013). Each distribution must include one-twelfth of the sum of the amount as defined, plus other amounts described in the Code. ALA. CODE § 11-98-5.2(b)(2) (Supp. 2013). “[T]here shall never be paid to any district, during any fiscal year, from the moneys deposited into the 911 Fund, an amount less than the sum of the total dollar amount of the initial base distribution amount” ALA. CODE § 11-98-5.2(6) (Supp. 2013).

Thus, under a plain reading of these sections, the Board is required, beginning October 1, 2013, to distribute at least one-twelfth of the yearly base distribution amount to the District. Further, under a plain reading, the total of the distributions for each fiscal year may not be less than the initial base distribution amount.

Unfortunately, however, it is impossible for the Board to comply with a plain reading of these statutes. The new statewide 911 charge became effective on October 1, 2013. ALA. CODE § 11-98-5(a) (Supp. 2013). Pursuant thereto, the various voice communication service providers (“Providers”) began collecting the uniform statewide 911 fee from each subscriber and remitting these fees to the Board. *Id.* The Providers must remit the collected charges by the end of the calendar month following the month the provider receives the charges from its subscribers. ALA. CODE § 11-98-5(b) (Supp. 2013). Generally, then, fees incurred by the consumer in October 2013 would not be collected by the providers until November 2013 and likely not remitted to the Board until December 2013. Thus, the Board could not distribute one-twelfth of the initial base distribution amount in October 2013 because it would not have sufficient moneys “then on deposit in the 911 fund” from which to make distributions. Additionally, and more problematic, as the fiscal year ending September 30, 2014, has drawn to a close, the Board will not have received collections from the Providers for August 2014 and September 2014 until after the end of the 2013-2014 fiscal year. Obviously, the Board cannot distribute funds in a fiscal year that it will not have until the next fiscal year.

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dep’t of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). Moreover, in construing statutes, courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass’n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001). If a statute is susceptible of two constructions, one of which is workable and fair and the

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other unworkable and unjust, the court will assume that the Legislature intended that which is workable and fair. *Ex parte Hayes*, 405 So. 2d 366, 370 (Ala. 1981).

An interpretation that section 11-98-5.2(6) of the Code requires the Board to distribute moneys that it does not have is clearly unworkable. It is far more logical that the Legislature intended that, for any fiscal year, the Board will distribute at least the sum of the total dollar amount of the initial base distribution to the District, albeit that two distributions, those for August 2014 and September 2014, will be made in the next fiscal year, October 2014 and November 2014, respectively. Thus, it is the opinion of this Office that the District is entitled to receive 100 percent of its base distribution amount for each fiscal year beginning October 1, 2013, payable in 12 equal monthly installments. Because of collection and remission delays contemplated by section 11-98-5.2 of the Code, however, distributions from the Board to the District may be made in the following fiscal year.

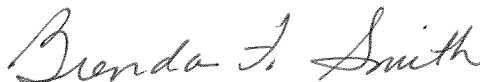
CONCLUSION

The Mobile County Communications District is entitled to receive 100 percent of its initial base distribution amount for each fiscal year beginning October 1, 2013, payable in 12 equal monthly installments. Because of collection and remission delays contemplated by section 11-98-5.2 of the Code, however, distributions from the Statewide 911 Board to the District may be made in the following fiscal year.

I hope this opinion answers your questions. 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

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