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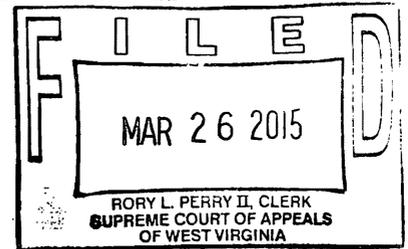
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**RANDY WAUGH/WAUGH'S
MOBILE HOME PARK,**

Defendant below / Petitioner,

v.

**Docket No. 14-1209
(Morgan County No. 13-C-147)**



**MORGAN COUNTY EMERGENCY
MEDICAL SERVICES BOARD, INC.
And COUNTY COMMISSION OF
MORGAN COUNTY, WEST VIRGINIA**

Plaintiffs / Respondents.

**MORGAN COUNTY EMERGENCY MEDICAL SERVICES BOARD, INC.'S
RESPONSE BRIEF**

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I. STATEMENT OF THE CASE

The facts of this case were stipulated by the parties, and were further adopted by the Court in its Final Order of October 28, 2014 (App. 276-282).

Petitioner Randy Waugh (herein "Petitioner") purchased real property on January 3, 2003 consisting of approximately 17.12 acres subdivided into approximately 62 lots and is now known as "Waugh's Mobile Home Park."

Petitioner owns and leases approximately 15 mobile homes and the lots in which they are situated, while other lots owned and leased by Waugh contain mobile homes that are owned by the lessee of the lot.

The Morgan County Commission adopted the Special Emergency Ambulance Service Fee Ordinance ("Ordinance") on June 29, 2007 of \$75.00 per "residential" or "living unit" for the collection of ambulance fees from all land owners in Morgan County. (App. 147-151)

Respondent, Morgan County Emergency Medical Services Board, Inc., (herein "Ambulance Authority"), based on information submitted initially to the Assessor of Morgan County, assesses the ambulance fees and sends the invoices to the land owners.

The Ambulance Authority sends the invoices for the ambulance fees to Petitioner for each of the lots he owns containing rental units in Waugh's Mobile Home Park.

Pursuant to the Ordinance, Petitioner is jointly and severally liable for the ambulance fees for the approximate 15 lots in Waugh's Mobile Home Park in which Petitioner owns and leases the trailer and the lot.

Petitioner is delinquent in paying the ambulance fees for 2008, 2009, 2010, 2011 and 2012 for five (5) of the lots on the property that contain residences.

On November 8, 2013, in an attempt to collect the delinquent ambulance fees, the

Ambulance Authority filed five (5) Complaints in the Magistrate Court of Morgan County which cases were removed to the Circuit Court of Morgan County and then consolidated by the Circuit Court.

The parties stipulated to the facts of the case and the issues were briefed by the parties. Oral argument was had and in a Final Order entered on October 28, 2014, the Circuit Court found in favor of the Respondent / Plaintiff below on all of the issues. (App. 276-297)

II. SUMMARY OF THE ARGUMENT

This case comes before the Honorable Supreme Court of Appeals on the issue of whether the Morgan County Commission's adoption of an emergency ambulance service fee of \$75.00 per "residential user" or "living unit" for the provision of emergency medical services within the County and their creation of an Emergency Medical Services Board (Authority), to implement such ambulance service pursuant to W. Va. Code § 7-15-4, includes the express and/or implied power of the Authority to collect the delinquent ambulance fees without requiring the Morgan County Commission to be a party to that collection suit.

The Circuit Court's well reasoned Order found that statutorily, the Authority had both the express authority and the implied authority to carry out the purposes of the Ordinance which was to collect the ambulance fees for the provision of emergency medical services within Morgan County, West Virginia.

The real question before the Court is whether the Circuit Court's reasoning for upholding the County Commission's adoption and implementation of the Ordinance and collection of the delinquent fees is a reasonable construction of the statute and Ordinance imposed by Morgan County. This Respondent argues specifically that the authorizing legislation allows the County to create and administer the emergency medical services through the creation of the authority (W. Va. Code § 7-15-17).

Further W. Va. Code § 7-15-10 defines the authority as a "public corporation" which has a well defined meaning in the law "generally held to be one created by the State for political purposes and to act as an agency in the administration of government. *See Meisel v. Tri-State Airport Authority*, 135 W. Va. 528, 64 S.E.2d 32 (1951)" *White v. Berryman*, 187 W. Va. 323, 329-330, 418 S.E.2d 917 (1992)

More specifically, the Circuit Court found that W. Va. Code § 7-15-10(l) authorizes the authority to “do any and all things necessary or convenient to carry out the powers given in this article [15], unless otherwise forbidden by law.” (App. 287)

In applying a common sense meaning to the interpretation of the statute, the Court properly held:

“A conclusion that a county commission which elects to administer its ambulance service via a created authority may delegate every function thereof except for the collection of fees contradicts the aforementioned principles of statutory construction.”

(App. 288-89)

Respondent believes it is an absurd construction of the statute for the legislature to have authorized the County Commission to impose the emergency medical services fee; authorize it to create an Authority; and provide that that Authority can “do all things necessary or convenient” to carry out Article 15 and then prohibit that Authority the power to sue for the collection of the delinquent ambulance fees. Further, the Petitioner did not advance “the special funds” argument before the Circuit Court and that argument was not addressed in the Circuit Court’s Order. That argument, if considered by this Court to be impliedly raised because of the reference generally to W. Va. Code § 7-15-17, does not change the Circuit Court’s analysis of the authority of the Board to independently collect delinquent fees of property owners such as the Petitioner.

Petitioner’s second argument deals with the joint and several liability provisions of the Morgan County Ordinance, arguing that the scheme of assessment by Morgan County flies in the face of the clear language of W. Va. Code § 7-15-17 and this Court’s prior decision in *Clay County Citizens for Fair Taxation v. Clay County Commission*, 192 W. Va. 408 (1994).

Essentially, the Petitioner argued below that since the landlord was not the user of the service, that the imposition of the fee on the property owner, who is not the residential user, violated the W. Va. Constitution as an *ad valorem* tax violative of the equal and uniform taxation clause of the W. Va. Constitution, Article X, Section I. The Petitioner appears to have abandoned this argument on appeal and instead argues that the burden of the fees should be tied to the user of the service. However, the Morgan County ambulance fee is tied to the user of the service.

Pursuant to the Stipulation of Facts of the parties (App. 142, ¶9), the landlord provides the names and addresses of the occupants of his rental units and/or whether any units are unoccupied on July 1 of each year. One year later the bills are sent out by the Authority, not the Assessor as the Petitioner claims.

The Petitioner's whole argument is refuted by this Court's decision in *Ellison v. City of Parkersburg*, 168 W. Va. 468, 284 S.E.2d 903, 906 (1981). In *Ellison*, this Court examined an Ordinance of the City of Parkersburg which is substantially similar to the Morgan County Emergency Medical Services Fee Ordinance. There, the fee was imposed against the property owner or occupant of a residential unit. Similar language is contained in the Morgan County Ordinance. This Court, applying a reasonableness standard of review to the Parkersburg Ordinance stated:

“We do not think that it is inherently unreasonable for the city to initially bill the owner of the property, whose identity is readily ascertainable, and to leave the question of who actually pays to the private parties involved.”

Ellison v. City of Parkersburg, 168 W. Va. 468, 284 S.E.2d 903, 906 (1981)

The Circuit Court below adopted the *Ellison* standard. (App. 292-93)

Petitioner's final argument is that because in some cases, the mobile homes are unoccupied as of July 1 of each year, that they should not be assessed any ambulance fee.

The Circuit Court correctly concluded that when property is being held out for lease, that it is a reasonable presumption that it would be leased to somebody. Further, once the Assessor is provided the information from the property owner as to who is in the mobile home, that information is sent to the Authority who then bills the property owner one year later. The ambulance fee is included along with the statements for real and personal taxes and fire fees to each residential owner of real property in Morgan County. The burden imposed upon the County to check on all rental properties to see who is occupying them a year after the initial information is provided by the property owner is completely unreasonable. For all the arguments set forth above, this Court should affirm the Circuit Court's well reasoned decision in this case.

III. STATEMENT REGARDING ORAL ARGUMENT

Respondent believes that oral argument is necessary in this case pursuant to the criteria in Rule 20(a)(2), (3) and (4) of the West Virginia Rules of Appellate Procedure for the following reasons:

a) The Petitioner is requesting the Court to clarify the case of *Clay County Citizens for Fair Taxation v. Clay County Commission*, 192 W. Va. 408, 452 S.E.2d 724 (1994) and construe W. Va. Code § 7-15-1, *et seq.* as to whether or not the assessment of ambulance service fees against a landlord for a residential rental unit that is occupied by a tenant on the date of assessment (July 1) is proper when the landlord is not the “user of the service.”

Further, the Petitioner requests that this Court decide whether, on the date of assessment, a temporarily unoccupied residential rental unit is subject to ambulance fees under W. Va. Code § 7-15-1, *et seq.* These issues appear to be of public importance and statutory construction.

b) The Petitioner is contesting the constitutionality of W. Va. Code § 7-15-17 and is requesting that this Court construe W. Va. Code § 7-15-17 as to whether the County Commission may delegate its authority to impose and collect ambulance service fees, and to bring actions to collect delinquent ambulance fees.

This case presents issues of fundamental public importance and statutory construction. The outcome of this case will have legal ramifications on every County Commission in the State of West Virginia in the imposition and collection of delinquent ambulance fees upon landowners. Therefore, this matter is appropriate for a Rule 20 argument and decision.

IV. ARGUMENT

A. Standard of Review

A *de novo* review is the appropriate standard of review for portions of this case. In *McClure v. City of Hurricane*, 227 W. Va. 482, 711 S.E.2d 552 (2010), the Court stated:

“... A *de novo* standard of review also governs the interpretation of any statutory provision, or in this case, a municipal ordinance as it involves a purely legal question. See Syl. Pt. 1, *Appalachian Power Co. v. State Tax Dep’t of W.Va.*, 195 W.Va. 573, 466 S.E.2d 424 (1995).”

Id. at 485.

However, there are other issues in this case that require a different construction and presumptions which are discussed in this brief.

B. Statutory Construction and Presumptions

When considering the review of an ordinance, or the application thereof, the Court should presume the ordinance is valid, and liberally construe the ordinance to achieve the purpose of the ordinance. The burden of proving otherwise is on the Petitioner.

1. Presumptions

Syllabus Pt. 1 of *Town of Burnsville v. Kwik-Pik, Inc.*, (although applying to the interpretation of a municipal ordinance) states the presumptions for interpreting statutes and ordinances.

The rules for construing statutes also apply to the interpretation of municipal ordinances. There is generally a presumption that an ordinance is valid when it appears that its subject matter is within a municipality's power and it has been lawfully adopted. The burden of proof is on the person asserting that the ordinance is invalid.

Town of Burnsville v. Kwik-Pik, Inc., 185 W. Va. 696, 697, 408 S.E.2d 646 (1991). See also Syl. Pt. 5 of *Far Away Farm v. Jefferson County Board of Zoning Appeals*, 22 W. Va. 252, 664 S.E.2d 137 (2008)

2. Statutory Construction

This Court has developed a significant body of law to assist in construing statutes.

W. Va. Code § 7-15-18 specifically provides for the liberal construction of the statute at issue here in the creation and application of emergency ambulance service by stating:

This article shall constitute full and complete authority for the provision of emergency ambulance service within a county by a county commission and for the creation of any authority and carrying out the powers and duties of any such authority. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents of approvals shall be required in connection therewith except as may be prescribed by this article.

Id.

And, this Court has provided specific rules for interpreting statutes:

When faced with a matter of statutory construction, the first inquiry involves an assessment of the specific statutory language at issue as well as a consideration of the underlying legislative intent. *See Appalachian Power Co. v. State Tax Dep't of West Virginia*, 195 W.Va. at 587, 466 S.E.2d at 438 (“We look first to the statute's language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed.”); Syl. pt. 1, *Smith v. State Workmen's Comp. Comm'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975) (“The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.”). If the language used by the Legislature is plain, the statute should be applied and not construed. “Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.” Syl. pt. 2, *State v. Elder*, 152 W.Va. 571, 165 S.E.2d 108 (1968). However, if the statutory language is not clear, the statute is ambiguous and must be construed to ascertain the meaning intended by the Legislature. “A statute that is ambiguous must be construed before it can be applied.” Syl. pt. 1, *Farley v. Buckalew*, 186 W.Va. 693, 414 S.E.2d 454 (1992).

Griffith v. Frontier West Virginia, Inc., 719 S.E.2d 747, 754 (W.Va., 2011)

C. The Circuit Court was correct in holding that the Morgan County Commission has the express power to collect delinquent fees and has lawfully delegated that power to the Ambulance Authority that it created.

The Petitioner argues that the Authority cannot step into the shoes of the County

Commission and collect the delinquent ambulance fees without the County Commission being a party to those collection efforts.

Petitioner states that: “The statutory delegation however, was to provide the emergency medical services, not collect the emergency medical service fees. (Petitioner’s Brief at p. 14) W. Va. Code § 7-15-17 governs the implementation of special emergency ambulance service fees by the County Commission:

A county commission may, by ordinance, impose upon and collect from the users of emergency ambulance service within the county a special service fee, which shall be known as the :special emergency ambulance service fee.” The proceeds from the imposition and collection of any special service fee shall be deposited in a special fund and used only to pay reasonable and necessary expenses actually incurred and the cost of buildings and equipment used in providing emergency ambulance service to residents of the county. The proceeds may be used to pay for, in whole or in part, the establishment, maintenance and operation of an authority, as provided for in this article: Provided, That an ambulance company or authority receiving funds from the special emergency ambulance fees collected pursuant to this section may not be precluded from making nonemergency transports.”

W. Va. Code § 7-15-17

The Morgan County Commission¹ created an ambulance authority² pursuant to W. Va. Code § 7-15-4 to provide ambulance service to the citizens of Morgan County. The Ambulance Authority³ is a public corporation.⁴

¹ The Morgan County Commission is also called the “Commission” herein.

² W. Va. Code § 7-15-10 is part of the Emergency Ambulance Service Act of 1975. That Act describes the general powers of an ambulance authority.

³ The Ambulance Authority is also called the “Authority or Board” herein.

⁴ The term “public corporation” has a well-recognized legal significance and is generally held to be one created by the State for political purposes and to act as an agency in the administration of government. We gave this explanation in *State ex rel. Sams v. Ohio Valley General Hospital Association*, 149 W.Va. 229, 140 S.E.2d 457, 460 (1965), in which we quoted this language from *Levin v. Sinai Hospital of Baltimore City*, 186 Md. 174, 46 A.2d 298 (1946): “ ‘A public corporation is an instrumentality of the State, founded and owned by the State in the public interest, supported by public funds, and governed by managers deriving their authority from the State.’ ” See also *Meisel v. Tri-State Airport Authority*, 135

The Authority can collect the delinquent fees without the Commission being a party, because the Commission, by creating the Authority, has imbued the Authority with all of the powers in the statute and delegated its authority based on the creation of the Ambulance Authority. Because W. Va. Code § 7-15-4 authorizes the Commission to provide the services directly or by contract with third parties or through an Authority, the legislature expressly allowed the Commission to substitute an authority to operate and manage emergency medical services in the county.

“Except as hereinafter provided and in addition to all other duties imposed upon it by law, the county commission shall cause emergency ambulance service to be made available to all the residents of the county where such service is not otherwise available: Provided, however, That the duty imposed upon county commissions by this article shall not be construed in such manner as to impose a duty to cause such emergency ambulance service to be provided unless the commission shall make an affirmative determination that there are funds available therefor by the inclusion of a projected expenditure for such purpose in the current levy estimate, and in the event that such county commission shall make such determination the commission shall not be under a duty to cause such service to be provided beyond a level commensurate with the amount of funds actually available for such purpose.

The county commission **may** provide the service directly through its agents, servants and employees; or through private enterprise; or by its designees; or by contracting with individuals, groups, associations, corporations or otherwise; or it may cause such services to be provided by an authority, as provided for in this article; and any municipality or county, or both, or any two or more contiguous counties, or any combination thereof, may create an authority, each participating government, acting individually, of an appropriate ordinance or order. Each authority shall constitute a public corporation, and as such, shall have perpetual existence. The authority shall be known by such name as may be established. (Emphasis added)

W. Va. Code § 7-15-4

It is noted that the legislature provided that the County “may” provide the service in a number of different ways. One way was to create an authority which the County opted for here.

W.Va. 528, 64 S.E.2d 32 (1951). *White v. Berryman*, 187 W.Va. 323, 329-330, 418 S.E.2d 917, 923 - 924 (W.Va.,1992)

An elementary principle of statutory is that the word “may” is inherently permissive in nature and connotes discretion. *Daily Gazette Co., Inc. v. West Virginia Development Office*, 1999, 521 S.E.2d 543, 206 W. Va. 51, *State v. Hedrick*, 1999, 514 S.E.2d 397, 204 W. Va. 547; *Hodge v. Ginsberg*, 1983, 303 S.E.2d 245, 172 W. Va. 17.

W. Va. Code § 7-15-4 clearly describes the Authority as a “public corporation.” (“Each authority shall constitute a public corporation, and as such, shall have perpetual existence. . .”) It is therefore apparent that the legislature intended to authorize the Commission to create the emergency medical services authority, and that the Authority act as a public corporation.

If the Authority is a public corporation, with the power “to sue and be sued, implead and be impleaded,”⁵ then the legislature must have intended the Authority to be able to collect unpaid ambulance fees once those fees were adopted by the Commission.

Nothing else makes sense. Why create an Authority with power to manage all aspects of ambulance service without giving that Authority the means to collect the funds to operate the service?

Or, to use the language of the statute, the Ambulance Authority has the power to:

- (a) To sue and be sued, implead and be impleaded;
- (b) To have and use a seal ***;
- (c) To make and adopt all rules and regulations and bylaws as may be necessary or desirable to enable it to exercise the powers and perform the duties conferred or imposed upon it by the provisions of this article;
- (d) To provide emergency ambulance service, maintain and operate such service, and 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;

⁵ The powers and duties of emergency medical services authorities are set forth in W. Va. Code § 7-15-10(a) which states that each authority is given the power “to sue and be sued, implead and be impleaded.”

(e) To acquire by grant, purchase, gift, devise or lease and to hold, use, sell, lease or otherwise dispose of real and personal property of every kind and nature whatsoever, * * *;

(f) To enter into contracts and agreements which are necessary, convenient or useful to carry out the purposes of this article with any person, * * *;

(g) To enter into contracts and agreements for superintendence and management services with any person, * * *;

(h) To execute security agreements, contracts, leases, equipment trust certificates and any other forms of contract or agreement, * * *;

(i) To apply for, receive and use grants, * * *;

(j) To encumber or mortgage all or any part of its facilities and equipment;

(k) To render all services permitted pursuant to article four-c, chapter sixteen of this code, including, but not limited to, emergency and nonemergency transportation; and

(l) To do any and all things necessary or convenient to carry out the powers given in this article unless otherwise forbidden by law.

W. Va. Code § 7-15-10 (portions omitted)

If the Ambulance Authority has the power to do “all things necessary and convenient,” it follows that the Ambulance Authority has the power to do the one essential thing that makes all of the above things possible, including collecting the delinquent fees. The Circuit Court agreed with this argument when it held:

“A conclusion that a county commission which elects to administer its ambulance service via a created authority may delegate every function thereof except for the collection of fees contradicts the aforementioned principles of statutory construction.”

(App. 288-89)

And it is the law of West Virginia that a statute, ordinance, or law should be interpreted to make sense, and in a way that furthers the purpose of the statute.⁶

⁶ The West Virginia Supreme Court has held:

The rule against absurdity states that “. . . a well established canon of statutory construction counsels against . . . an irrational result [for] [i]t is the duty of this Court to avoid whenever possible a construction of a statute which leads to absurd, inconsistent, unjust or unreasonable results.” *Charter Communications VI, PLLC v. Community Antenna Service, Inc.*, 211 W.Va. 71, 77, 561 S.E.2d 793, 799 (2002) (citations omitted), as quoted in *Dunlap v. Friedman's, Inc.*, 213 W.Va. 394, 401, 582 S.E.2d 841, 848 (W.Va. 2003) (Davis, J., dissenting opinion).

“As helpful as the various rules of statutory construction may be in determining legislative intent, perhaps the soundest guidance comes from the Supreme Court's admonition that we give the language of a statute a “commonsensical meaning.” *State v. McGilton*, 729

“When interpreting statutes promulgated by the Legislature, we first discern the objective of the enactment.” ‘The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.’ Syllabus point 1, *Smith v. State Workmen's Compensation Commissioner*, 159 W.Va. 108, 219 S.E.2d 361 (1975).” Syl. pt. 6, *State ex rel. ACF Indus., Inc. v. Vieweg*, 204 W.Va. 525, 514 S.E.2d 176 (1999). In gleaning legislative intent, we endeavor to construe the scrutinized provision consistently with the purpose of the general body of law of which it forms a part.

‘Statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments.’ Syllabus Point 3, *Smith v. State Workmen's Compensation Comm'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975). Syllabus point 3, *Boley v. Miller*, 187 W.Va. 242, 418 S.E.2d 352 (1992). Syl. pt. 3, *Rollyson v. Jordan*, 205 W.Va. 368, 518 S.E.2d 372 (1999). See also Syl. pt. 4, in part, *State ex rel. Hechler v. Christian Action Network*, 201 W.Va. 71, 491 S.E.2d 618 (1997) (“In ascertaining legislative intent, effect must be given to each part of the statute and to the statute as a whole so as to accomplish the general purpose of the legislation.” (internal quotations and citations omitted)); Syl. pt. 2, in part, *Mills v. Van Kirk*, 192 W.Va. 695, 453 S.E.2d 678 (1994) (“To determine the true intent of the legislature, courts are to examine the statute in its entirety and not select ‘any single part, provision, section, sentence, phrase or word.’ Syllabus Point 3, in part, *Pristavec v. Westfield Ins. Co.*, 184 W.Va. 331, 400 S.E.2d 575 (1990).”).

State ex rel. McGraw v. Combs Services, 206 W.Va. 512, 518, 526 S.E.2d 34, 40 (W.Va. 1999).

S.E.2d 876, 883 -884 (W.Va., 2012), citing *United States v. Universal Corp.*, 344 U.S. 218, 221, 73 S.Ct. 227, 229, 97 L.Ed. 260 (1952).⁷

The enabling provisions of W. Va. Code § 7-15-10 (the Emergency Ambulance Service Act of 1975) are designed to fully empower the Ambulance Authority once the Authority is created by the County Commission. The Petitioner’s argument (which, in this case amounts to advocating that the Ambulance Authority is not fully empowered), would wholly thwart this overriding purpose and stop the statute from operating as it was intended. This cannot be the proper interpretation of this section, under the statutory construction rules.

Here, the least absurd and most “commonsensical” interpretation is that the law which allows the Commission to create the Authority, and gives the Authority all the powers to function and incur debt, and to sue and be sued and to do all things necessary or convenient, also gives the Authority the right to collect delinquent fees.

As stated above, W. Va. Code § 7-15-4 gives the Commission several options:

“... provide the service directly through its agents, servants and employees; or through private enterprise; or by its designees; or by contracting with individuals, groups, associations, corporations or otherwise; or it may cause such services to be provided by an authority.”

So the Commission may operate the emergency ambulance service itself, or, “it may cause such services to be provided by an authority” which it has done here by creating the Ambulance Authority.

⁷ The Court’s Order stated:

“...the most commonsensical interpretation of W. Va. Code § 7-15-4 is that an Ambulance Authority created pursuant to that section steps into the shoes of the County Commission, assuming all powers that Commission would have in a like role.”

Said another way, the Authority, once created, has the same powers to operate the emergency ambulance service as the Commission, since the Commission is lawfully delegating its power to the Authority.

And one of those powers is to collect delinquent fees. So the Authority has the express power to collect fees because that power was lawfully delegated to it by the County Commission pursuant to statute, W. Va. Code § 7-15-4. The Circuit Court agreed with this construction.

The Circuit Court held in its Order:

“Consequently, the Court holds the Authority has the express power to collect fees because that power was lawfully delegated to it by the County Commission pursuant to statute, W. Va. Code § 7-15-4. The delegation of that power is not beyond the scope of the enabling act, but instead complies with the act.”

(App. 290)

The Ambulance Authority also has the implied power to collect the delinquent fees. In *State Line Sparkler of WV, LTD. v. Teach, et al.*, 187 W. Va. 271, 418 S.E.2d 585, 586 (1992), this Court acknowledged that powers to carry out legislative authority may arise by implication.

The Court held at Syl. Pt. 2:

“A grant of the police power to a local government or political subdivision necessarily includes the right to carry it into effect and empowers the governing body to use proper means to enforce its ordinances. Consequently, the power to punish by a pecuniary fine or penalty is implied from the delegation by the legislature of the right to enforce a particular police power through ordinances or regulations.”

Thus, not only does the Ambulance Authority have the statutory authority to organize and operate the ambulance service, and “do any and all things necessary or convenient to carry out the powers given in [article 15]” in furtherance of the enforcement of its Ordinance, the principle established by this Court in *State Line Sparkler* means that the granting of the police power to

local government or political subdivision necessarily includes the plenary power to carry it into effect the enforcement of its Ordinance, including collecting delinquent fees.

In its Brief, the Petitioner briefly raised the issue of the “special fund” authorized pursuant to W. Va. Code § 7-15-17 arguing that the Authority could collect the fees and subvert the legislature’s intent because the County may not be able to fulfill its obligation in overseeing the collection of these funds and determining whether the funds had been deposited into the County Commission’s special funds and that they are being used for reasonable and necessary expenses. (Petitioner’s Opening Brief at pp. 15-16) This argument was not raised by Petitioner below or addressed in the Circuit Court’s Final Order. The Parties’ Stipulation of Facts stipulated to the purpose of the ambulance fee as follows:

The emergency ambulance fee issued only for the deferring of the actual costs of providing the ambulance services, through the MCEMS Board. The amounts collected for the Emergency Ambulance fee are as follows:

2008	\$647,011.74
2009	\$636,955.13
2010	\$648,558.66
2011	\$636,487.30
2012	\$608,580.36

These amounts do not cover the annual operating costs for the emergency ambulance service.

(App. 141, ¶4)

This argument that the County is not properly using the funds the Authority is collecting is totally without any support in the record below and is clearly wrong. The argument also changes nothing about the applicable of the law here. Nor does it support Petitioner’s argument that the Commission is supposed to create a “special fund” since the Commission is authorized to create an Authority to operate the special emergency medical services and the County is also authorized by the statute to create the Authority to do all the things set forth in the Code, as well

as collect the delinquent fees and manage the operation of the special funds collected to defray the cost of ambulance service in Morgan County.⁸

Although not in the record, nor raised as an issue below, the County and Authority represent to this Court that all the monies collected for emergency medical service fees in Morgan County are deposited into a special account and used only for those purposes specified in W. Va. Code § 7-15-17.

D. The Morgan County Special Emergency Ambulance Service Fee Ordinance does not violate the enabling act because it creates joint and several liability between landlord and tenant.

The Morgan County Ordinance makes the landlord (Petitioner) and any tenant jointly and severally liable.⁹ (App. 149) In *Clay County* at Syl. Pt. 1, the Court held the service fee that taxes each household was reasonably tied to the services being provided holding:

⁸ The Court's attention is called to the Parties' Stipulation of Facts at ¶15.

⁹ Though raised below, Petitioner now appears to have abandoned the claim that the fee is an *ad valorem* tax in this appeal. However, to be safe, Respondent will address that issue briefly.

It is stipulated that the primary purpose of the fee is for the cost of providing the emergency ambulance service (App. 141, ¶4). Further, it is stipulated that the total fees collected do not cover the annual operating cost for providing the ambulance service. (App. 141, ¶4).

Based on the Court's ruling in *Cooper v. City of Charleston*, 218 W. Va. 279, 282, 624 S.E.2d 716, (2005) Syl. Pt. 1, the "operation and effect" of the Morgan County Ordinance is a fee charged for providing the ambulance service in the County, and not an impermissible tax.

The fee is constitutional because the fee is sufficiently tied to the service to pass constitutional muster. In *Clay County Citizens for Fair Taxation v. Clay County Commission*, 192 W. Va. 408, 452 S.E.2d 724, the Court was asked to determine the constitutionality of the ambulance service fee imposed by Clay County. The Court stated:

On 13 May 1991, the Clay County Commission enacted the Special Emergency Ambulance Service Fee Ordinance and imposed a \$25 annual fee upon "any bona fide owner or occupant of a living unit within the geographic boundaries of Clay County, West Virginia." The ordinance defines "living unit" as "any personal property and real property owner and taxpayers in any place of residence as classified by the records of the Clay County Assessor which include residential homes, mobile homes, apartments, personal care facilities, nursing homes and correctional facilities." The Special Emergency Ambulance Service Fee was defined as "a specified uniform fee charged to each living unit that ambulance service is made available to and entitles the resident user to necessary 911 emergency transport calls to the nearest medical facility and includes the services set forth in 'Ambulance Rates' below. . . ." Essentially this ordinance assesses a fee on each Clay County household to support the provision of ambulance services.

“An emergency ambulance service fee that taxes each household regardless of the number of members \$25 a year to support ambulance services succeeds in tying the burden of the fee to the usage of the service in a sufficiently reasonable way to satisfy the requirements of W. Va. Code 7-15-17 [1975] and it is valid, lawful and enforceable under W. Va. Code 7-15-17 [1975].”

The definitions in *Clay County, supra*, are strikingly similar to those in the Morgan Ordinance. Section One, paragraph 2 of Morgan County Ordinance states:

“In the event a resident user owns more than one living unit within Morgan County, that resident may not be charged more than one fee, provided that such other living unit is permanently unoccupied or occupied only by the resident user. Both occupant and owner shall be jointly and severally liable for payment of such fee for each living unit.”

The Morgan County Ordinance further defines:

LIVING UNIT – Any place of residence as classified by the records of the Morgan County Assessor, including residential homes, vacation and secondary homes, *mobile homes*, apartments, personal care facilities, nursing homes and correctional care facilities.

RESIDENTIAL USER – *Any bona fide owner or occupant of a living unit* within the geographic boundaries of Morgan County, with the exception of those persons qualifying for the exclusion listed in the above section of this Ordinance entitled PURPOSE.

DELINQUENT RESIDENT USER – Any resident user, as defined above, who has not paid the Special Emergency Ambulance Service Fee, as defined below, for any period.

SPECIAL EMERGENCY AMBULANCE SERVICE FEE – A specified uniform annual base fee charged to each living unit to which ambulance service is made available for necessary 911 emergency transport calls to the nearest certified medical facility within the Tri-State area. It does not cover the costs of routine transports or secondary emergency transport from one medical facility to another. Additional Emergency Ambulance Rates and Emergency Interagency and Non-Emergency Transports Rates will be charged as applicable.

(App. 147-151)

Id. at 409.

Petitioner claims that the joint and several liability provisions make the ordinance unlawful and exceed the enabling act. In fact, Petitioner claims that the Circuit Court erred because it held that the ambulance fee did not violate this Court's decision in *Clay County* to assess the user fees to households, rather than the owners. (Petitioner's Brief at p. 18).

The Petitioner is attempting to micro-examine the statute. The point of the *Clay County* case is that the fee was reasonably related to the use – as is the case here. In other words, the fee is payment for the potential use of a service. Thankfully, not everyone who pays the fee will use the ambulance service. The lack of use in and of itself does not make the fee invalid. The point is the fee is directly related to the service and is reasonably tied to the user.

The Petitioner's micro-examination viewpoint goes against statutory interpretation principles:

“In ascertaining legislative intent, effect must be given to each part of the statute and to the statute as a whole so as to accomplish the general purpose of the legislation.” Syl. Pt. 2, *Smith v. State Workmen's Compensation Commissioner*, 159 W.Va. 108, 219 S.E.2d 361 (1975). Syl. Pt. 2, *White v. Wyeth*, 227 W.Va. 131, 705 S.E.2d 828 (2010). Syl. pt. 5, *Mace*, 227 W.Va. 666, 714 S.E.2d 223.

And, in this case, the general purpose of the legislation is to fund the Authority so as to provide ambulance services to residents of Morgan County. As a matter of policy, creating a system where renters are solely responsible for the service fees creates an unreasonable burden on the Ambulance Authority since the renters potentially move in and out of these units over the course of a year. First, the Authority cannot possibly know who is renting the units, and at what time, in a timely enough fashion to keep the persons occupying the units sorted out, without

creating a tremendous administrative burden on the County – a burden that does not further the purpose of providing ambulance service in Morgan County.¹⁰

Further, Petitioner’s argument that joint and several liability for the fees is prohibited flies in the face of the principles established in *Ellison v. City of Parkersburg*, 168 W.Va. 468, 470, 284 S.E.2d 903, 904 - 905 (W.Va.,1981). In *Ellison*, the fee payer/appellee argued that “the ordinance is invalid because it imposes a charge for the collection and disposal of solid waste on owners and occupants of residential units rather than on the ‘users of such service.’” *Id.*

The *Ellison* court, in analyzing the reasonableness of the fee, stated:

The question, therefore, is whether the Parkersburg ordinance uses a reasonable method for the identification of the users of the city's waste collection and disposal service.

The purpose of the ordinance in this case is to provide for the installation, continuance, maintenance or improvement of an essential or special service and to impose reasonable rates, fees and charges on the users of that service as authorized by *W. Va. Code*, 8-13-13 [1971]. In order to effectuate that purpose the city has imposed a charge against “each property owner or occupant of a residential unit.” Parkersburg Code § 955.07(a) [1979]. The ordinance, in § 955.07(b), provides that initially, as between the owner and the occupant of the residential unit, the owner will be billed for the service. The ordinance also provides that the occupant may be billed upon notifying the Director of Finance of his status as occupant of the premises served.

In operation this system should work fairly and effectively to serve the purpose of placing the cost of the services on the user of the service. Where the owner is also the occupant of the residential unit it is clear that the proper party is being billed. Where the owner is a landlord he will be billed for the service but, upon notice to the Director of Finance, the occupant will be billed directly. Alternatively, the landlord-owner may pay the charge and then pass the cost on to his tenant. In either case the user ultimately pays the fee. We do not think that it is inherently unreasonable for the city to initially bill the owner of the property, whose identity is readily ascertainable, and to leave the question of who actually pays to the private parties involved.

Ellison v. City of Parkersburg, 168 W.Va. 468, 472-473, 284 S.E.2d 903, 906 (W.Va., 1981) (footnote omitted)

¹⁰ The ambulance fee is not mailed to the landlord until the year following the landlord’s submission of the occupants list the prior year. (App. 199-200)

While *Ellison* dealt with a municipality under W. Va. Code § 8-13-13, the Court in *Clay County* relied in part on *Ellison* in its decision and noted that “the Clay County Special Emergency Ambulance Service Fee is imposed under a scheme similar to fees imposed under W.Va. Code 8-13-13” *Id.* at 452 S.E.2d 724, 727.

Consider the following:

1) If this Court stated that the ambulance fee scheme in *Clay County* was similar to the *Ellison* municipal fee scheme under W. Va. Code § 8-13-13, and

2) *Ellison* held the fee to be valid as a user fee because either the landlord or the tenant would have to pay, and

3) *Ellison* further opined that the landlord/tenant could sort it out amongst themselves as to which of them actually paid the fee, then does it not make sense to apply the same logic to the Morgan County Ambulance fee – especially since the parties in this case are jointly and severally liable, which is the functional equivalent of *Ellison’s* concept to “leave the question of who actually pays to the private parties involved?”

Said another way, the joint and several liability imposed by the Morgan County Ordinance is just another way of accomplishing the procedure in *Ellison* – it accomplishes the same goal, and the parties end up in the same place as the owner/occupant in *Ellison*, which makes sense, and accords with the goals of the enabling act in this case.¹¹

¹¹ The Circuit Court agreed in its Final Order stating:

“The [party challenging the validity of a fee structure] ha[s] the burden of proving that the... ordinance clearly failed to reasonably serve the purpose for which it was enacted.” *Cooper v. City of Charleston*, 218 W.Va. 279, 287 (2005). As noted by both the *Ellison* Court and the Plaintiff, the residency of tenants is fleeting, and direct collection therefrom would place a great burden on the Commission to assess fees in the correct shares to the correct tenants. The Defendant appears correct in his assertion that the tenants of property are the true users of the ambulance service; and the courts of this state have already found billing the owner of property primarily is a reasonable method of

Said yet another way, and contrary to the Petitioner’s contention, the joint and several liability is not the Achilles’ heel of the Ordinance, but instead comports with the *Ellison* principle, because joint and several liability allows the owner and occupants to sort out amongst themselves who pays the fee, similar to the landlord/occupant scenario in *Ellison*.

As a matter of administrative policy, the renters may live in the residence only a portion of the year, and then new renters appear. How does the county assess, collect – or even know – about the change in renters to assess the fees? How are the fees apportioned? The practical aspect of collection places an untenable administrative burden on the Authority, with no way to address the issue save a monthly evaluation by the Authority – which is an administrative impossibility. Again, the *Ellison’s* logic solves this puzzle, when this Court states that “We do not think that it is inherently unreasonable for the city to initially bill the owner of the property, whose identity is readily ascertainable, and to leave the question of who actually pays to the private parties involved.” *Id.*

For the same reasons, the Authority is within its power to charge the Petitioner a fee on July 1 of each year.¹² Nothing prevents the Petitioner from attaching the amount of the ambulance fee as a pro-rated charge to the rent for these units as they are rented. That places the administrative burden squarely where it belongs – on the landlord, who created the situation, and who stands to profit from the rent of the residences.

The question is not absolute equity, which is impossible to achieve, but whether the fee is directly related to the service and is reasonably tied to the user. In analyzing a fee in *Cooper*, *supra*, this Court relied on *Clay County’s* commonsense analysis, stating “we will not invalidate

assessing the fee to these true users, leaving the matter between the private parties to the lease as to who will be the ultimate payer.
(App. 293)

¹² Unless those units fall within the exemption as “permanently unoccupied.”

a fee merely because a litigant is able to suggest other possible ways of taxation and opine that such examples are more equitable.” *Cooper v. City of Charleston*, 218 W.Va. 279, 287, 624 S.E.2d 716, 724 (W.Va., 2005)

And it is somewhat incorrect for the Petitioner to state that he receives no benefit from the fee. The Petitioner benefits from the service because the ambulance service remains available, even while the unit is being rented or changing renters. The Petitioner can truthfully state to potential new renters that they are covered by the ambulance service fee, which is a plus in convincing someone to rent the unit. The Petitioner can then, as *Ellison* suggests, work out a pro-rated fee with the renter if he chooses. And, if the unit remains unoccupied, and no one will use the unit for the foreseeable future, for example, if the unit is taken out of service for repair, or some other reason, the Petitioner can follow the exoneration procedure and remove it from the fee scheme.

Thus, by the express language of the Ordinance, Petitioner still owes the ambulance fee.

E. It is proper to assess Petitioner for the Ambulance Fee unless the mobile home is “permanently unoccupied” within the meaning of the Ordinance.

Petitioner argues that he should not be liable for the fee if the mobile home rental unit is vacant at the time he supplies the information to the Assessor’s office on or before July 1 of each year.

The Authority agrees that if the rental mobile home unit is “permanently unoccupied,” (as defined by the ordinance) then no fee is due.

The Ordinance provides that if a resident user owns more than one living unit within the County that they may be charged only one fee, but only if the additional living unit “is permanently unoccupied or occupied only by the resident.” Here, Petitioner rents the mobile

homes to tenants. The mobile homes are not “permanently unoccupied” but remain open for rental.

Like the *Clay County* fees, the provisions for ambulance service in the Morgan County Ordinance “ties the burden of the fee to the usage of the service in a sufficiently reasonable way” to pass statutory and constitutional muster. The ambulance fee here supports the provision of ambulance service. If Petitioner’s mobile homes are vacant at times, which they may well be, the fee is still due because the rental unit is not “permanently unoccupied.”

It must be assumed that Petitioner intends to rent the vacant mobile home units. By definition then, the units will not be “permanently unoccupied” and a fee is owed on the unit.

There is no viable way the Authority can constantly check on rental properties in the County to determine their status. If Petitioner believes that one of his units is “permanently unoccupied” and that he has been wrongfully assessed an ambulance service fee for a rental mobile home, he can follow the exoneration procedure.¹³ The intent of the Ordinance is to charge those persons with property meeting the definition of “living unit” for the fee. It is up to the owner of the “living unit” to pursue an erroneous assessment of fees.

This should not be a burden to Petitioner since the Authority relies on the information provided by Petitioner to make the assessment in the first instance. The Ordinance provides a

¹³ Section One, paragraph 3 of the Ordinance provides:

“If a user believes that he/she is erroneously charged an ambulance service fee, the EMS agency shall provide, upon the resident’s request, an exoneration form. The form shall be filled out by the resident/owner and returned to the EMS agency. The EMS agency shall, within a reasonable time, cause to be investigated any request for exoneration. The EMS agency shall, at its next regular meeting after completion of the investigation, make and communicate to the Morgan County Commission its recommendation regarding the exoneration. If good cause for exoneration is found by the Commission, said Commission shall exonerate or modify any or all imposed charges, and shall notify the property owner in writing of its actions. If the Commission does not exonerate or modify as requested by the property owner, an appeal may be filed, in pursuance to this article, with the Circuit Court of Morgan County.

(App. 149)

method to correct erroneous assessments. This procedure is not unlike a taxpayer applying for a review of erroneous assessment to the County Commission sitting as a Board of Equalization and Review. *See* W. Va. Code § 11-3-24(c), et seq.

Petitioner also claims that the tenant who rents the mobile home and lot owned by Petitioner should be responsible for the ambulance fee because the tenant is the “resident user.”

The Morgan County Ordinance defines “resident user” as:

“Any bona fide owner or occupant of a living unit within the geographic boundaries of Morgan County, with the exception of those persons qualifying for the exclusion listed in the above section of this Ordinance entitled PURPOSE.”

(App. 147)

Petitioner is the “bona fide owner” of the rental unit; therefore, he is “jointly and severally” liable for the ambulance fee.

The Morgan County Ordinance, Section One, paragraph two, states:

“In the event a resident user owns more than one living unit within Morgan County, that resident may not be charged more than one fee, provided that such other living is permanently unoccupied or occupied only by the resident user. Both occupant and owner shall be jointly and severally liable for payment of such fee for each living unit.”

(App. 149)

Nothing prevents Petitioner from charging the tenant as part of the rent, the annual cost of the ambulance fee, which is Seventy-Five Dollars (\$75.00). However, whether Petitioner charges the tenant or not, Petitioner remains liable for the fee.

V. CONCLUSION

The Court is respectfully requested to uphold the Circuit Court of Morgan County’s well reasoned opinion below.

Respectfully submitted,
Respondent, by counsel.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**RANDY WAUGH/WAUGH'S
MOBILE HOME PARK,**

Defendant below / Petitioner,

v.

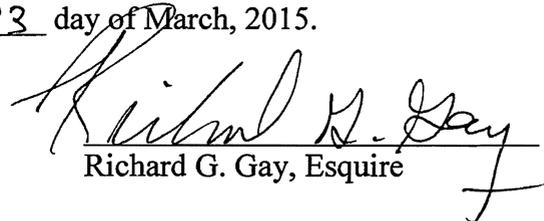
**Docket No. 14-1209
(Morgan County No. 13-C-147)**

**MORGAN COUNTY EMERGENCY
MEDICAL SERVICES BOARD, INC.
And COUNTY COMMISSION OF
MORGAN COUNTY, WEST VIRGINIA**

Plaintiffs / Respondents.

CERTIFICATE OF SERVICE

I, Richard G. Gay, Esquire, do hereby certify that a true and accurate copy of the foregoing **MORGAN COUNTY EMERGENCY MEDICAL SERVICES BOARD, INC.'S RESPONSE BRIEF** and **CERTIFICATE OF SERVICE** has been served upon Michael L. Scales, P.L.L.C., Attorney at Law, 314 W. John Street, Martinsburg, West Virginia 25402 by United States, first-class mail, postage prepaid, this 23 day of March, 2015.


Richard G. Gay, Esquire