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OFFICIAL OPINION 2001-6

The Honorable Clyde Kersey
Indiana House of Representatives
Indiana State House
Indianapolis, Indiana 46204

RE: Use of Ind. Code § 36-8-16 Funds to Purchase Radio Equipment

Dear Representative Kersey:

This letter responds to your request for an advisory opinion on the following question:

Can a municipality designate funds collected under Ind. Code § 36-8-16-1 *et seq.* for the purchase of radio communication system(s)?

The Office of the Attorney General has twice previously addressed this or a very similar question, as you noted in your letter. The first resulted in an unofficial opinion dated October 29, 1998, and the second in a letter dated September 13, 2000, re-affirming the 1998 opinion.

We conclude that, pursuant to Ind. Code § 36-8-16-14, a municipality may not authorize the use of emergency telephone system fees collected under Ind. Code § 36-8-16-5 for the purchase of computerized radio communications system(s).

ANALYSIS

The first and sometimes only step in any effort to interpret a piece of legislation is to examine the language of the legislation. *Sales v. State*, 723 N.E. 2d 416 (Ind. 2000). A court's objective in construing a statute is to determine and implement the intent of the legislature. *Superior Const. Co. v. Carr*, 564 N.E.2d 281 (Ind. 1990). Courts look to the plain language of a statute to divine this intent. *Wilson v. Pleasant*, 660 N.E. 2d 327 (Ind. 1995). Thus, in order to determine the permitted uses of funds collected under Ind. Code § 36-8-16-5, a court will look to the plain meaning of the words chosen by the legislature in drafting the statute.

Ind. Code § 36-8-16 provides for the imposition and collection of fees for emergency telephone systems. Ind. Code § 36-8-16-5. The section specifically provides that "(T)he fiscal

body of a county may adopt an ordinance to impose a monthly enhanced emergency telephone system fee..." Ind. Code § 36-8-16-5. The fees remitted under this section must be deposited in a separate emergency telephone system fund. Ind. Code § 36-8-16-13.

Ind. Code § 36-8-16-14 lists the authorized uses for funds collected under Ind. Code § 36-8-16-5 and deposited in the emergency telephone system fund. Section 36-8-16-14 states:

The emergency telephone system fees shall be used **only** to pay for:

- (1) the lease, purchase, or maintenance of enhanced emergency telephone equipment, including necessary computer hardware, software, and data base provisioning.
- (2) the rates associated with the service suppliers' enhanced emergency telephone system network services; and
- (3) the personnel expenses of the emergency telephone system.

The legislative body of the unit may appropriate money in the fund **only** for such an expenditure.

(emphasis added).

The repeated use of the word "only" in setting out permitted uses indicates the legislature's intent that this list be exclusive. Only the uses set out in this section are permitted for the funds collected under Ind. Code § 36-8-16-5. Thus, the funds may only be used for enhanced emergency telephone systems, or service and specified expenses incidental to an "emergency telephone system."

An enhanced emergency telephone system is specifically defined in the chapter as "a telephone system that utilizes the three digit number 911 to send automatic number identification and automatic location identification for reporting police, fire, medical, or other emergency situations." Ind. Code § 36-8-16-2. Also included in the definition is a telephone system that provides computerized telephone warning of emergencies using "911 database information and technology." Ind. Code § 36-8-16-2. It is doubtful that law enforcement radio equipment for use in squad cars would meet the requirements of this provision. Since it is not a "rate" or "personnel expense," a radio system would qualify under the statute only if it: (1) Utilizes the three digit number 911 to send automatic number and location identification, (2) Constitutes a telephone system that provides telephone warning of emergency situations using 911 database information, or (3) Is a necessary computer hardware component of such a system.

The explicit, repetitive nature of the chapter makes clear the permitted uses of funds collected under Ind. Code § 36-8-16-5. The purchase of a radio system that does not utilize 911 systems to provide location or telephone number information, or to provide telephone warnings of emergencies, is not among these uses.

If the General Assembly had intended the funds collected under Ind. Code § 36-8-16-5 to be used to purchase radio systems, it would have allowed for such expenditure in the statute. A plain reading of the statute reveals that the section explicitly and repeatedly allows appropriation

of funds “only” for the purchase, lease, maintenance, and specified incidental expenses of enhanced emergency telephone equipment. Appropriation for any other expenditure is precluded.

CONCLUSION

For the foregoing reasons, it is our opinion that the funds collected under Ind. Code § 36-8-16 may not be used for the purchase of a radio system, or any other communications device, unless that radio system clearly qualifies as an enhanced emergency telephone system as defined in Ind. Code § 36-8-16-2, or as a necessary computer hardware component thereof.

Sincerely,

Stephen Carter
Attorney General