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Mr. Richard N. Taylor
Administrator
Wireless 911 Board
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Re: Advisory Letter; Uses of Wireless Fund money; N.C. Gen. Stat. 62A-25(b)

Dear Mr. Taylor:

You have requested an opinion of the Attorney General about permissible uses of wireless Enhanced 911 funds by Public Safety Answering Points ("PSAPs") and the public safety agencies that support those PSAPs. You have also posed eight specific questions about permissible use of Wireless Fund monies. My responses to your general and specific questions follow.

Background

My understanding is that wireless Enhanced 911 service works for PSAPs very much the same way wire line Enhanced 911 service works. For either kind of Enhanced 911 call, wireless or wire line, a telephone company delivers technical information identifying the caller's location -- automatic number identification and automatic location identifier -- along with the verbal contents of the 911 call over telephone lines to the PSAP's answering equipment. Once at the PSAP's equipment, the identifying information as well as the verbal content of the call is used to determine where a public safety agency or unit will be dispatched to answer the call for help. Dispatching help is typically accomplished by using non-commercial radio connections between the PSAP and area law enforcement, fire departments and emergency medical services. "Enhanced" 911 refers to the fact that the 911 call is automatically accompanied by location identification information so that the PSAP's computerized answering equipment will be able to translate and display the location of the caller. Because wireless Enhanced 911 calls are made from mobile locations, providing location identifying

information for wireless calls is more complex and may need different or upgraded hardware and software at the PSAP answering point from that already in place for wire line Enhanced 911 calls.

Wire line Enhanced 911 telephone service and Wireless Enhanced 911 telephone service are controlled by two different statutes. Funding of Enhanced 911 service that comes from callers making 911 calls over land line or "regular" telephone service is provided by Article I, "Public Safety Telephone Service," of Chapter 62A of the General Statutes (N.C. Gen. Stat. 62A-1 through 62A-20). Funding of Enhanced 911 service that comes from callers making 911 calls over commercial mobile radio service ("CMRS"), wireless services such as cellular telephone service or personal communication systems ("PCS"), is provided by Article II, "Wireless Telephone Service," of Chapter 62A (N. C. Gen. Stat. 62A-21 through 62A-32).¹ Both the wire line and wireless statutes provide for a fund to pay for permissible uses of monies collected for Enhanced 911 service. However, the funds are separate and distinct: the monies are collected from different kinds of telephone subscribers, the funds are administered by different entities and the permissible uses of the funds are different. You have asked only for an opinion on permissible uses of the Wireless Fund.

General Question

1. What are the permissible uses of the wireless Enhanced 911 funds by public safety agencies?

Answer: Wireless Funds should be used for the lease or purchase of telephone equipment, the maintenance of that equipment, the nonrecurring and recurring telephone company charges for delivering the enhanced information with the 911 call, and any nonrecurring costs of establishing that emergency 911 telephone system.

Permissible uses of Wireless Fund money by PSAPs is controlled by G.S. 62A-25(b) which provides in pertinent part:

Money from the . . . [Wireless] Fund [for PSAPs] shall be used only to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, and nonrecurring costs of establishing a wireless Enhanced 911 system. Money from the . . . Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system.

(Emphasis added.)

In the absence of a clear indication to the contrary, words in the statute must be given their ordinary meaning unless they have acquired a technical significance. Duke Power co. v Clayton, Comr. of Revenue, 274 N.C. 505, 164 S.E.2d 289 (1968); Sayles Biltmore Bleacherie, Inc. v Johnson, Comr. Of Revenue, 266 N.C. 692, 147 S.E. 2d 177 (1966). If the statute itself contains a definition of a word

¹ In enacting legislation for wireless Enhanced 911 service, the General Assembly enacted a new Chapter, designated as Chapter 62B of the General Statutes. That Chapter was redesigned as Article 2 of Chapter 62A at the direction of the Revisor of Statutes.

used within it, that definition controls and courts must construe the statute as if the definition had been used in place of the word. If the words of the definition itself are ambiguous, they must be construed pursuant to the general rules of statutory construction. In re Clayton-Marcus Co., Inc., 286 N.C. 215, 210 S.E.2d199 (1974).

The clear words of N.C. Gen. Stat. 62A-25(b) contemplate that PSAP funds should be used for emergency telephone equipment. The statute does not address permissible spending in terms of establishing wireless Enhanced 911 service, but rather uses the term "wireless Enhanced 911 system." Wireless Enhanced 911 system is defined in the statute as "an emergency telephone system that provides the user of the [commercial mobile radio service] connection with wireless 911 service and, in addition, directs 911 calls to the appropriate PSAPs by selective routing based on the geographical location from which the call originated and provides the capability for ANI² (or Pseudo-ANI)³ and ALI⁴ features, in accordance with the requirement of the FCC Order."⁵ N. C. Gen. Stat. 62A-21(15).

Although ANI, Pseudo-ANI and ALI are defined in the statute, "emergency telephone system" is not. Webster's New Collegiate Dictionary defines "system," as among other things, "a group of devices or artificial objects or an organization forming a network especially for distributing something or serving a common purpose: a telephone *system*, a hearing *system*, a highway *system*, a data processing *system*...." (p. 1184) Thus, the plain words of the statute contemplate that wireless Enhanced 911 spending from the Wireless Fund will be for equipment and devices for the telephone system facilitating wireless Enhanced 911 service. An outline of generally permissible uses of Wireless Fund monies for PSAPs under N.C. Gen. Stat. 62A-25(b) is provided for your convenience on the following page:

² "ANI" means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call. GS 62A-21(2)

³ "Pseudo-ANI" means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face. G.S. 62A-21(12)

⁴ "ALI" means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudomautomatic number identification. GS 62A-21(1)

⁵ "The FCC Order" is the Order of the Federal Communications Commission; FCC Docket No. 94-102 adopted on December 1, 1997. G.S. 62A-21(7)

Template for Permissible PSAP Spending Wireless Enhanced 911 Systems⁶

Classes of recurring costs:

- I. Lease or purchase over time of emergency telephone equipment for wireless Enhanced 911 systems including
 - A. Hardware
 - B. Software
 - C. Database provisioning;

- II. Cost of maintaining emergency telephone equipment for wireless Enhanced 911 systems including
 - A. Hardware
 - B. Software
 - C. Database provisioning;

- III. Payment of the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system.

Nonrecurring costs:

- IV. One time purchase of emergency telephone equipment for wireless Enhanced 911 systems including
 - A. Hardware
 - B. Software
 - C. Database provisioning.

- V. Payment for the nonrecurring costs of establishing a wireless Enhanced 911 system.

⁶ Pursuant to N.C. Gen. Stat. 62A-25(b)

Specific Questions

With that background in mind, I address your specific questions.

2. Is purchase of cabinets that actually hold the hardware of the emergency telephone equipment and the associated computer hardware a permissible use of the Wireless Fund monies?

Answer: Only a share that can reasonably be allocated to wireless Enhanced 911 service is a permissible use of Wireless Fund money. Cabinet costs are an allowable expense as they fall within the nonrecurring cost of establishing a wireless Enhanced 911 system. However, as the cabinets will presumably hold emergency telephone and computer equipment used for both wire line and wireless Enhanced 911 calls, only that portion that can be fairly allocated to wireless service can be paid by Wireless Fund money. Any allocation of this or other items would have to be consistent with appropriate accounting standards and would have to be supported by proper records.

3. Are purchases of a back-up generator and an uninterrupted power supply permissible uses of the Wireless Fund?

Answer: Only a share allocable to wireless Enhanced 911 system is a permissible use of Wireless Fund money. Uninterrupted power supply and back up generators are needed to power the computer hardware and software which receives and translates the location identification information on an incoming wireless 911 call. As such, these pieces of equipment are part of the nonrecurring costs of establishing wireless Enhanced 911 service. However, these items are also part of the nonrecurring costs of establishing a wire line Enhanced 911 system. Only the share of the expense that can be reasonably allocated to answering wireless Enhanced 911 calls should be paid for by Wireless Fund money. Again, appropriate accounting standards and adequate record keeping would have to be followed.

4. Are the costs of the radio console at the dispatch position in the PSAP, the base station radio transmitter for the PSAP, the tower or tower space rental for the antenna of the PSAP radio system and the allowable costs of maintenance expense for the radio transmitter system permissible uses of the Wireless Fund monies?

Answer: For every item listed above except the radio console, the answer is no. The costs of purchasing and maintaining radio equipment to dispatch public safety units would exist for the public safety agency supporting the PSAP whether the public safety agency decided to equip itself to receive location identification on a 911 call or not. As discussed above, the statute clearly ties PSAP use of Wireless Fund monies to telephone equipment or start up costs of the telephone system.

If the console at the answering point is used both to answer incoming wireless 911 calls and to dispatch outgoing radio signals, a portion of the console could reasonably be allocated to Wireless Fund money. The remainder of the cost of the console would necessarily have to be allocated to wireline Enhanced 911 service and radio dispatching. Again, appropriate accounting standards and adequate record keeping would have to be followed.

5. Is the purchase, lease or rental of recording equipment to tape record 911 calls a permissible use of Wireless Fund money?

Answer: Partially, if at all. While the need to buy equipment to tape calls may be a nonrecurring cost of establishing a wireless Enhanced 911 system, presumably such equipment is already in place to tape all other 911 calls. Unless the additional of wireless Enhanced 911 service requires additional equipment or upgrades, the costs of this equipment does not appear to fall within the General Assembly's intent to encourage the establishment of wireless Enhanced 911 service by providing funding for start up costs for the wireless Enhanced 911 system. However, if the addition of wireless Enhanced 911 calls compels replacement or upgrade of taping equipment, then only the share that can be reasonably allocated to wireless Enhanced 911 calls should be covered by money from the Wireless Fund. Appropriate accounting standards and adequate record keeping would have to be followed.

6. Is the cost of publishing public education flyers, brochures and other educational material a permissible use of the Wireless Fund money?

Answer: No, these do not appear to be permissible costs under the statute. They are not costs of emergency telephone equipment, nor are they nonrecurring costs of establishing a wireless Enhanced 911 system.

7. Can the salary of an Information Systems Supervisor who, among other duties, inspects all departmental computer information and monitors use and performance of the Police Department records system, be paid from Wireless Fund money?

Answer: Partially if at all. The described job appears to be a general managerial position over all the computerized information systems within a local government department. If the agency can reasonably allocate a portion of this salary to establishing or maintaining database provisioning for a wireless Enhanced 911 telephone system only, than that share could be paid from Wireless Fund money. However, I would caution that the requesting agency keep very good records of when and how long the Information Systems Supervisor attends only to Wireless Enhanced 911 work and follow appropriate accounting standards.

8. Can money from the Wireless Fund be used to pay the salary or a portion of the salary of a Data Base Technician for "data base provisioning"?

Answer: A portion of the cost of salaries for database provisioning may be paid from money from the Wireless Fund. The statute provides that Wireless Fund money may be used for either the nonrecurring cost of establishing a wireless Enhanced 911 system or the recurring cost of maintenance of emergency telephone equipment for a wireless Enhanced 911 system. Equipment is defined as

including database provisioning. Any establishment or maintenance of the identifier database would necessarily involve a technician's time and would be covered by the statute. However, the database would typically contain information about both wireless and wire line subscribers, so that any start-up or maintenance costs must be allocated between wire line and wireless Enhanced 911 service. The public safety agency using the Wireless Fund monies in less populated areas would likely also have to allocate some reasonable share of the technician's salary to work that does not involve Enhanced 911 database provisioning at all, either wire line or wireless. Again, I would caution that the requesting agency keep very good records of when and how long the Data Base Technician attends only to Wireless Enhanced 911 work and follow appropriate accounting standards.

9. Is the expense of an automobile for database provisioning an allowable expense?

Answer: Not unless the PSAP or its supporting agency can overcome the presumption that provisioning or maintaining a data base for wireless 911 involves a minimum need to locate subscribers. Because wireless users are mobile, any attempt to identify their locations before they make a 911 call is unhelpful at best. The location of wireless Enhanced 911 caller is tied to the wireless tower site nearest the caller when the call is placed. Locations of towers should be information provided by the commercial mobile radio service provider to the PSAP. I do not see a need to drive out to the cell tower locations in an effort to establish or maintain those locations in an Enhanced 911 database.

This is an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

Sincerely,

Karen E. Long
Assistant Attorney General

C: Richard C. Webb, Chair Wireless 911 Board