

00-068

**FIRE PROTECTION: FIRE DEPARTMENTS AND FIRE COMPANIES.**

**County, within its discretion, may provide emergency equipment for use by fire and rescue organizations in responding to emergency calls and may seek reimbursement for actual cost of equipment use.**

Ms. Deanis L. Simmons  
County Attorney for Tazewell County  
December 29, 2000

You ask whether Tazewell County has the authority to require reimbursement for costs related to the use of emergency equipment in response to emergency calls for fire and rescue services.

You relate that Tazewell County owns certain emergency service equipment that is used to provide fire and rescue services to the citizens of the county through the operation of fire and rescue organizations. You further relate that the county is responsible for replacing and maintaining such equipment. You inquire whether the county may devise a system of reimbursement for the actual costs of emergency equipment used by fire and rescue organizations in response to emergency service calls.<sup>1</sup>

Section 27-6.1 of the *Code of Virginia* provides that "[t]he governing body of any [locality] may<sup>2</sup> establish as a department of government a fire department." Prior opinions of the Attorney General consistently have concluded that Virginia localities have no affirmative obligation under state law to provide fire and rescue services.<sup>3</sup> Consequently, there is no obligation on counties to establish and maintain fire and rescue services.<sup>4</sup> Although localities are statutorily authorized to provide fire-fighting and rescue services,<sup>5</sup> it is, nevertheless, within their discretion to do so.<sup>6</sup> I am not aware of any statutory amendment or court decision that alters this conclusion, nor am I aware of any statute prohibiting the reimbursement mechanism you suggest.<sup>7</sup> Inasmuch as the provision of emergency services by a county is discretionary, requiring reimbursement from a user of such services for the reasonable costs associated with the use of emergency equipment owned and maintained by the county is appropriate.

Accordingly, it is my opinion that it is within the discretion of a county to provide the emergency equipment in issue and similarly within its discretion to seek reimbursement for the actual cost of the use of such equipment.

<sup>1</sup>You note that the system proposed by the county will not involve collection of any costs for volunteer services associated with emergency responses.

<sup>2</sup>Use of the word "may" in a statute indicates the statute is permissive and discretionary, rather than mandatory. See 1999 Op. Va. Att'y Gen. 193, 194 & 195 n.6.

<sup>3</sup>See, e.g., 1994 Op. Va. Att'y Gen. 71, 72 (citing 1984-1985 Op. Va. Att'y Gen. 137).

<sup>4</sup>See 1984-1985 Op. Va. Att'y Gen., *supra*; *accord* Op. Va. Att'y Gen.: 1979-1980 at 171, 172 (stating that § 27-6.1 *permits* governing bodies to establish fire departments); 1978-1979 at 102, 103 (concluding that county is not authorized to enter into service agreement with fire company without creating fire zone or district); 1977-1978 at 452, 453 (noting that town charter grants council authority to establish and maintain fire department); 1976-1977 at 85, 86 (stating that § 27-6.1 authorizes any county to establish fire department); 1972-1973 at 328 (noting that city may recognize rescue squad as integral part of its safety program by passing resolution or ordinance).

<sup>5</sup>See § 27-23.6.

<sup>6</sup>See 1984-1985 Op. Va. Att'y Gen., *supra* note 3, at 137.

<sup>7</sup>*Compare* § 15.2-1716 (providing for reimbursement of expenses incurred in responding to DUI incident, and stating that "section shall not preempt or limit any remedy available to the Commonwealth, to the locality or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving or operation of a vehicle as set forth herein").