



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: 9-1-1 Emergency Number Fee, Hillsborough  
County, Florida

File: B-215735.2

Date: April 20, 1987

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### DIGEST

1. 9-1-1 Emergency Number Fee imposed by Hillsborough County, Florida is actually a tax, levied to support the municipal service of access to fire and police, etc. The fee has all the same characteristics as Maryland and Texas 9-1-1 fees previously disallowed in 64 Comp. Gen. 655 and B-215735, Sept. 26, 1986. The fact that the telephone company is buying 9-1-1 equipment and selling it to the County government is not sufficient to distinguish this case on the grounds that 9-1-1 access is a service provided by the telephone company to its customers.

2. 9-1-1 Emergency Number Fee cannot be paid as a service charge because the reasonable value of the service to the United States has not been calculated. Additionally, the computation of the fee as a flat rate per telephone line per month is itself an indication that the charge is not a user charge, but rather a tax.

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### DECISION

By letter dated August 4, 1986, an authorized Certifying Officer of the United States Department of Agriculture asked for an advance decision concerning the propriety of paying a 9-1-1 Emergency Number Fee included on invoices for telephone service in the County of Hillsborough, Florida. We have examined 9-1-1 statutes before, and issued several decisions holding that 9-1-1 fees are not payable by the Federal Government. Florida's statute is no exception.

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9-1-1 systems in the State of Florida are authorized by Fla. Stat. Ann. § 365.171 (West 1985). This statute designated 9-1-1 as the universal emergency number and authorized Florida counties to acquire the equipment necessary to institute 9-1-1 service. Counties are also authorized to impose a fee to recoup the nonrecurring cost of 9-1-1 system installation. The fee is set by statute at a maximum of 50 cents per line per month on no more than 25 lines per customer. The fee is to be added onto telephone bills by the provider of telephone services, which serves strictly as a collection agent and is compensated for the administrative costs of collection.

On April 2, 1986, Hillsborough County enacted an ordinance to institute 9-1-1 service in the County. The County ordinance incorporated all the features of the state statute, described above.

We have examined 9-1-1 service fees in 64 Comp. Gen. 655 (1985) and in B-215735, Sept. 26, 1986. We disapproved the fees in both cases, holding that where 9-1-1 service is authorized or required by law to be offered and a service fee assessed to defray its costs, the fee amounts to a tax which the Federal Government may not constitutionally be required to pay.

Essential public services required by law to be provided to the public at large must be provided to the United States on the same basis as to any other citizen, even though the Federal Government is constitutionally immune from paying the taxes which support these services. 49 Comp. Gen. 284 (1969). By the same reasoning, we have also held that involuntarily assessed fees of any kind to support these or other essential governmental functions are, of necessity, taxes. 24 Comp. Gen. 599, 600-01 (1945); 26 Comp. Gen. 382 (1946); B-168024, Dec. 13, 1973. See also, Hagar v. Reclamation Dist. No. 108, 111 U.S. 701, 707 (1881).

In our view, telephone access to police, fire and other municipal services, is intrinsically connected to the services themselves. The fact that 9-1-1 service is more technologically sophisticated than normal telephone access does not change its essential character.

It has been argued that the 9-1-1 charge is a user fee, similar to a water or sewer charge. Service charges are

generally payable, provided they are demonstrably representative of the fair and reasonable value received by the United States for the services rendered. See 49 Comp. Gen. 72, 76 (1969) and cases cited therein.

Because of the contingencies involved, it would be very difficult to compute either the value to the United States of having the service available or the probable utilization of the 9-1-1 system by the United States. In any event, the County has not attempted to demonstrate that the amount of the 9-1-1 charge is related to the value of the service. Absent a tangible benefit and measurable value to the United States, there is no authority to pay any service charge. See B-207695, June 13, 1983.

Our cases have also examined flat rate formulas for computing a "service charge" and found that, whether based on property value (B-183094, Mar. 27, 1975), or square footage (B-168287, Feb. 1970), flat rates are an indication that the fee in question is not related to the value of services and is actually a tax. Indeed, we have held that an otherwise payable service charge was prohibited because it was computed on the same flat rate basis as taxes. 49 Comp. Gen. 72, 76 (1969). A flat rate charge per telephone line is, in our view, also a tax rather than a service charge.

In answer to the certifying officer's second question, no blanket exemption from all 9-1-1 fees should be declared by the Department. For example, 9-1-1 fees might be payable if a telephone company installed and operated a 9-1-1 system itself, and offered 9-1-1 emergency access, like directory assistance, as a component of its regular communications services. In the present case, according to the County Public Safety Director, the system is being installed in Hillsborough County by the provider of telephone service. The County has obligated itself to indemnify the telephone company for all costs relative to system acquisition. The 9-1-1 fee is intended to finance the County's payments to the telephone company.<sup>1/</sup> We assume that local government employees will staff the public safety answering points

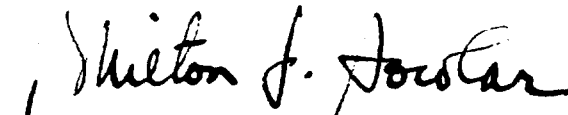
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<sup>1/</sup> Under the County ordinance, the telephone company collects the 9-1-1 fees from customers and remits them within 30 days to the County. The company is permitted to retain 1 percent of all fees collected as an administrative charge. The County then repays the telephone company in monthly installment payments for the full cost of the 9-1-1 equipment.

once the computer system is operational, but it is not clear from the information provided who will ultimately "run" the system. However, the mere fact that the telephone company is buying the equipment in the first instance is not sufficient to cause us to conclude that the telephone company is itself providing 9-1-1 access as a part of its ordinary services.

The Public Safety Director's letter, mentioned above, raises the prospect that the County might require the telephone company to absorb the costs of 9-1-1 fees which remain unpaid because of the Federal Government's immunity. Such an attempt would violate the state statute as well as the indemnification agreement entered into by the County. The statute provides that the County is ultimately responsible to the telephone company for all 9-1-1 charges. Fla. Stat. Ann. § 365.171 (13)(a)(3). Since the resulting increased costs to the telephone company could not be passed on to the United States in any event, this would be strictly the concern of the County and the telephone company.

The Public Safety Director's letter also threatens that the County would cut off 9-1-1 access from Government telephones because of nonpayment of the charge. However, as we indicated above, a local government may not withhold access by the Federal Government to mandated essential services, like police, fire and other emergency services, because of the Government's immunity from paying the taxes that support those services.

  
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