

February 16, 2016

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1608

SYLLABUS:

2016-005

1. Moneys disbursed to a county from the wireless 9-1-1 government assistance fund pursuant to R.C. 128.55 may be used to purchase telephony software, provided the software is necessary software that is required to enable the public safety answering points in the countywide 9-1-1 system to provide wireless enhanced 9-1-1.
2. A county may receive the full amount of moneys that may be disbursed to it from the wireless 9-1-1 government assistance fund, provided the costs paid with disbursed moneys are only those costs that are incurred by the number of public safety answering points set forth in R.C. 128.571(A) and (B) that provide wireless enhanced 9-1-1. (2015 Op. Att'y Gen. No. 2015-035, syllabus, clarified.)



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OPINION NO. 2016-005

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1608

Dear Prosecutor Walsh:

You have requested an opinion about the use of moneys disbursed from the wireless 9-1-1 government assistance fund to pay the cost of purchasing telephony¹ software for a countywide 9-1-1 system.² You have explained that Summit County would like to purchase telephony software that routes a wireless 9-1-1 call to the geographically appropriate public safety answering point (PSAP) in the countywide 9-1-1 system. It is our understanding that the telephony software is an internet protocol³ based system that will be housed in the computer systems of the information technology department of the county. Each PSAP in the county will connect remotely to the system in order for 9-1-1 calls to be routed to a PSAP.

¹ “Telephony” is defined as “the use or operation of an apparatus (as a telephone) for transmission of sounds as electrical signals between widely removed points[.]” *Merriam-Webster’s Collegiate Dictionary* 1284 (11th ed. 2005).

² For the purpose of this opinion a “countywide 9-1-1 system” is a 9-1-1 system that has adopted a final plan to provide 9-1-1 services in the townships and municipal corporations of the county. *See* R.C. 128.03(A)(1) (“[a] countywide 9-1-1 system shall include all of the territory of the townships and municipal corporations in the county and any portion of such a municipal corporation that extends into an adjacent county”).

³ “Internet protocol” “is a protocol that defines the format of the data signal.” Patrick Bennett, *New Combinations: Changing Technologies and Infrastructures and the Business Organizations that Will Deal with Them*, 5 Rich. J.L. & Tech. 3, *27 (1998). “Internet Protocol ... is needed for transferring information between computers without first having to connect to the other computer[.]” Stephen Fraser, *The Conflict Between the First Amendment and Copyright Law and its Impact on the Internet*, 16 Cardozo Arts & Ent. L.J. 1, 38 n.272 (1998).

You question whether pursuant to R.C. 128.57 and R.C. 128.571 a county may use moneys disbursed from the wireless 9-1-1 government assistance fund to purchase telephony software for a 9-1-1 system that will route wireless 9-1-1 calls to the PSAPs in the 9-1-1 system, regardless of whether the PSAP is one of the allowable number of PSAPs for which disbursed moneys may be used under R.C. 128.571. You further question whether the cost of purchasing the telephony software is an allowable expense under R.C. 128.57 when the software operates as a “virtual PSAP” and routes a 9-1-1 call to a geographically appropriate PSAP without the use of personnel.⁴

Moneys collected from wireless 9-1-1 charges imposed pursuant to R.C. 128.42 are deposited into four funds in the state treasury: the wireless 9-1-1 government assistance fund, the wireless 9-1-1 administrative fund, the wireless 9-1-1 program fund, and the next generation 9-1-1 fund. R.C. 128.54(A)(1). By the end of each month, the Tax Commissioner “shall disburse moneys from the wireless 9-1-1 government assistance fund, plus any accrued interest on the fund, to each county treasurer.” R.C. 128.55(A)(1). As soon as a county treasurer receives a disbursement of moneys pursuant to R.C. 128.55(A), “the county *shall* disburse, in accordance with the allocation formula set forth in the final plan, the amount the county so received to *any other subdivisions* in the county and any regional councils of governments in the county *that pay the costs* of a public safety answering point providing wireless enhanced 9-1-1 under the plan.” R.C. 128.55(B) (emphasis added).

“Enhanced 9-1-1” is “a 9-1-1 system capable of providing both enhanced wireline 9-1-1 and wireless enhanced 9-1-1.” R.C. 128.01(C). “Enhanced wireline 9-1-1” is “a 9-1-1 system in which the wireline telephone network ... automatically routes the call to emergency service providers⁵ that serve the location from which the call is made and immediately provides to personnel answering the 9-1-1 call information on the location and the telephone number from which the call is being made.” R.C. 128.01(D) (footnote added). “Wireless enhanced 9-1-1” is “a 9-1-1 system that, in providing wireless 9-1-1, has the capabilities of phase I and, to the extent available, phase II enhanced 9-1-1 services as described in 47 C.F.R. 20.18(d) to (h).” R.C. 128.01(E).⁶ Phase I enhanced 9-1-1 service requires a wireless service provider to “provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-

⁴ Summit County has adopted a charter pursuant to Ohio Const. art. X, § 3. Your letter does not indicate that any local charter provisions are pertinent to your questions.

⁵ “Emergency service” is defined as “emergency law enforcement, firefighting, ambulance, rescue, and medical service.” R.C. 128.01(N). An “emergency service provider” is “the state highway patrol and an emergency service department or unit of a subdivision or that provides emergency service to a subdivision under contract with the subdivision.” R.C. 128.01(O).

⁶ “Wireless 9-1-1” is “the emergency calling service provided by a 9-1-1 system pursuant to a call originating in the network of a wireless service provider.” R.C. 128.01(H).

ANI.” 47 C.F.R. 20.18(d)(1).⁷ Phase II enhanced 9-1-1 service requires wireless service providers to “provide to the designated Public Safety Answering Point ... the location of all 911 calls by longitude and latitude in conformance with Phase II accuracy requirements [set forth in 47 C.F.R. 20.18(h)].” 47 C.F.R. 20.18(e). Thus, wireless enhanced 9-1-1 is the ability of the PSAPs in a 9-1-1 system to receive wireless 9-1-1 calls along with information that identifies the number associated with the call and the call’s location.

R.C. 128.57 sets forth the costs for which moneys disbursed under R.C. 128.55(A) may be expended. Pursuant to R.C. 128.57(A), moneys disbursed from the wireless 9-1-1 government assistance fund and the next generation 9-1-1 fund

shall be used solely for the purpose of paying either or both of the following:

(1) Any costs of designing, *upgrading*, *purchasing*, leasing, programming, *installing*, testing, or maintaining the *necessary* data, hardware, *software*, and trunking *required for the public safety answering point or points of the 9-1-1 system to provide wireless enhanced 9-1-1*, which costs are incurred before or on or after May 6, 2005, and consist of such additional costs of the 9-1-1 system over and above any costs incurred to provide wireline 9-1-1 or to otherwise provide wireless enhanced 9-1-1....

(2) Any costs of training the staff of the public safety answering point or points to provide wireless enhanced 9-1-1, which costs are incurred before or on or after May 6, 2005. (Emphasis added.)

A subdivision that provides countywide wireless enhanced 9-1-1 may use moneys disbursed pursuant to R.C. 128.55(A) “to pay any of its personnel costs of one or more public safety answering points providing countywide wireless enhanced 9-1-1” after “certif[ying] to the [statewide emergency services internet protocol network] steering committee that it has paid the costs described in [R.C. 128.57(A)(1) and (2).]” R.C. 128.57(B). If any of the moneys that were disbursed after July 2013 pursuant to R.C. 128.55(A) remain, a subdivision may use the remaining balance “to pay any of its costs of providing countywide wireless 9-1-1, including the personnel costs of one or more public safety answering points providing that service.” R.C. 128.57(C). Before incurring a cost identified in R.C. 128.57(A)(1), “a regional council of governments operating a [PSAP] or a subdivision shall consider the standards [promulgated by rule of the statewide emergency services internet protocol network steering committee pursuant to R.C. 128.021].” R.C. 128.57(A)(1).⁸ If a PSAP does not

⁷ “ANI,” or automatic number identification, in a 9-1-1 system “identifies the calling party and may be used as a call back number.” 47 C.F.R. 20.3. “Pseudo-ANI” is defined as “[a] number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning.” *Id.*

⁸ R.C. 128.021(A) states, in part, “the steering committee shall adopt rules that establish technical and operational standards for public safety answering points eligible to receive disbursements under [R.C. 128.55].” The Steering Committee has not yet finalized the adoption of rules pursuant to R.C. 128.021(A).

comply with those standards, a disbursement of moneys from the wireless 9-1-1 government assistance fund shall not be made to the countywide 9-1-1 system. R.C. 128.57(E)(1).

Payment of the costs set forth in R.C. 128.57 are subject to the limitations imposed by R.C. 128.571. R.C. 128.57. R.C. 128.571 provides, in pertinent part:

(A) Payment of costs specified in [R.C. 128.57(A) to (D)] from a disbursement under [R.C. 128.55] shall be limited to those specified and payable costs incurred for a specified number of public safety answering points of the particular 9-1-1 system as follows:

(1) For the period beginning on March 1, 2009, and ending on December 31, 2015, a countywide 9-1-1 system may use disbursements for not more than five public safety answering points per calendar year.

(2) Except as provided in division (B) of this section:

(a) For the period beginning on January 1, 2016, and ending on December 31, 2017, a countywide 9-1-1 system may use disbursements for not more than four public safety answering points per calendar year.

(b) For the period beginning on January 1, 2018, and thereafter a countywide 9-1-1 system may use disbursements for not more than three public safety answering points per calendar year.

(B) If within a county there is a municipal corporation with a population of over one hundred seventy-five thousand according to the most recent federal decennial census, that county may use disbursements for one public safety answering point in addition to the number of public safety answering points allowed under division (A)(2) of this section.

If the number of PSAPs for which a countywide 9-1-1 system uses moneys that have been disbursed pursuant to R.C. 128.55 exceeds the number allowed under R.C. 128.571(A) and (B), the disbursement amount “shall be reduced by fifty percent until the county complies with the [PSAP] limitations established under [R.C. 128.571].” R.C. 128.571(C).

Reading R.C. 128.57 and R.C. 128.571 together, it is evident that in order to receive the full amount of moneys that may be disbursed to a county pursuant to R.C. 128.55(A), the costs that may be paid with the disbursed moneys are limited to the costs that are incurred by the number of PSAPs set forth in R.C. 128.571(A) and (B). In other words, as of January 1, 2016, moneys disbursed pursuant to R.C. 128.55(A) may be used to pay the costs set forth in R.C. 128.57 for only four (or, if applicable, five) PSAPs that provide wireless enhanced 9-1-1. This restriction affects whether a county will receive one-hundred-percent of the moneys that may be disbursed to it. If moneys disbursed pursuant to R.C. 128.55(A) are used to pay the costs of more than the number of PSAPs set forth in R.C. 128.571(A) and (B), the county may still receive a disbursement from the wireless 9-1-1

government assistance fund. The amount of moneys disbursed is reduced but not eliminated. R.C. 128.571(C).⁹

⁹ In a recent opinion, the Attorney General advised:

A countywide 9-1-1 system may operate more than the number of wireless public safety answering points specified in R.C. 128.571 and receive a full disbursement of moneys from the wireless 9-1-1 government assistance fund pursuant to R.C. 128.55, so long as the number of wireless public safety answering points for which a county uses those moneys does not exceed the number specified in R.C. 128.571.

2015 Op. Att’y Gen. No. 2015-035 (syllabus). Our examination of the issues presented by your request for an opinion has necessitated clarification of the syllabus of 2015 Op. Att’y Gen. No. 2015-035.

“Each public safety answering point shall be operated by a subdivision or a regional council of governments[.]” R.C. 128.03(D)(1). R.C. 128.01(M) defines “subdivision” as

a county, municipal corporation, township, township fire district, joint fire district, township police district, joint police district, joint ambulance district, or joint emergency medical services district that provides emergency service within its territory, or that contracts with another municipal corporation, township, or district or with a private entity to provide such service; and a state college or university, port authority, or park district of any kind that employs law enforcement officers that act as the primary police force on the grounds of the college or university or port authority or in the parks operated by the district.

“A subdivision ... that operates a public safety answering point shall pay all of the costs associated with establishing, equipping, furnishing, operating, and maintaining that facility and shall allocate those costs among itself and the subdivisions served by the answering point based on the allocation formula in a final plan.” R.C. 128.03(D)(2). The subdivisions served by a PSAP shall pay the subdivision that operates the PSAP the amount that is determined by the allocation formula set forth in the final 9-1-1 plan, except for the amount of funding that is provided through an assessment on the improved parcels of real property in the county pursuant to R.C. 128.22. R.C. 128.03(E). Thus, a subdivision that operates a PSAP shall pay the costs associated with that PSAP in accordance with the requirements of the final plan.

R.C. 128.55(B) requires a county to disburse, in accordance with the allocation formula of the final 9-1-1 plan, moneys that the county receives from the wireless 9-1-1 government assistance fund to any subdivision that pays the costs of a PSAP providing wireless enhanced 9-1-1. For a county to receive the full amount of moneys that may be disbursed to the county pursuant to R.C. 128.55(A), the costs that may be paid with the disbursed moneys are limited to the costs that are incurred by the

Moneys disbursed pursuant to R.C. 128.55(A) may be expended to upgrade, purchase, or install necessary software that is required to enable PSAPs in a countywide 9-1-1 system to provide wireless enhanced 9-1-1. R.C. 128.57(A)(1). As explained above, wireless enhanced 9-1-1 is the ability of the PSAPs in a 9-1-1 system to receive a wireless 9-1-1 call along with information that identifies the number associated with the call and the call's location. Am. Sub. H.B. 361, 125th Gen. A. (2004) (eff. May 6, 2005), the act that first imposed a wireless 9-1-1 charge and created the

number of PSAPs set forth in R.C. 128.571(A) and (B). Therefore, if a countywide 9-1-1 system has multiple PSAPs that provide wireless enhanced 9-1-1, and each PSAP is operated by a separate subdivision that pays the costs of the PSAP providing wireless enhanced 9-1-1, then as a result of R.C. 128.55(B) and R.C. 128.571, the countywide 9-1-1 system may need to consolidate the number of PSAPs or the operation of those PSAPs to avoid a reduction in the amount of moneys that may be disbursed to the county pursuant to R.C. 128.55.

To illustrate, let us assume a countywide 9-1-1 system has a total of eight PSAPs and each PSAP provides wireless enhanced 9-1-1. Let us further assume that pursuant to R.C. 128.571(A), beginning on January 1, 2016, the countywide 9-1-1 system may use moneys disbursed from the wireless 9-1-1 government assistance fund for only four PSAPs without experiencing a reduction in the amount of money disbursed to the county. If each of the eight PSAPs is operated by a separate subdivision that, under the final 9-1-1 plan, pays the cost of that PSAP providing wireless enhanced 9-1-1, then R.C. 128.55(B) requires the county to disburse moneys from the wireless 9-1-1 government assistance fund to each of those subdivisions. In this example, because each subdivision that operates one of the eight PSAPs is required to receive moneys disbursed from the wireless 9-1-1 government assistance fund, if that money is used by each of those subdivisions to pay the expenses of the PSAP providing wireless enhanced 9-1-1, the countywide 9-1-1 system will exceed the limitation imposed by R.C. 128.571. Insofar as the moneys disbursed from the wireless 9-1-1 government assistance fund will be used to pay the costs of eight PSAPs that provide wireless enhanced 9-1-1, the amount of money disbursed to the county shall be reduced by fifty percent pursuant to R.C. 128.571(C).

If, however, under the final 9-1-1 plan, five of the eight PSAPs are operated by one subdivision (a county) that pays the costs of the PSAPs providing wireless enhanced 9-1-1, and the other three PSAPs are operated by separate subdivisions (three municipal corporations) that pay the costs of the PSAPs providing wireless enhanced 9-1-1, moneys disbursed from the wireless 9-1-1 government assistance fund to the county shall be disbursed to the county and the three municipal corporations pursuant to R.C. 128.55(B). So long as the county that operates five PSAPs uses the disbursed moneys to pay the costs of only one PSAP providing wireless enhanced 9-1-1 and the three municipal corporations use the disbursed moneys to pay the costs of the PSAP that each municipal corporation operates, the moneys disbursed from the wireless 9-1-1 government assistance fund will be used to pay the costs of four PSAPs providing wireless enhanced 9-1-1. In this example, the countywide 9-1-1 system will not exceed the limitation set by R.C. 128.571, and the county will receive the full amount of moneys that may be disbursed to it from the wireless 9-1-1 government assistance fund.

wireless 9-1-1 government assistance fund, was described by the Ohio Legislative Service Commission as “establish[ing] a special, temporary, state-level funding mechanism for certain specified costs of local public safety answering points (PSAPs) providing automatic number identification and automatic location identification capabilities for wireless calls made to 9-1-1 emergency telephone systems.” Ohio Legislative Service Comm’n, Final Analysis, Am. Sub. H.B. 361 (2004) (as enacted by the General Assembly). Thus, the purpose of imposing a wireless 9-1-1 charge and disbursing moneys from the wireless 9-1-1 government assistance fund is to provide financial assistance to subdivisions so that PSAPs in a countywide 9-1-1 system may provide wireless enhanced 9-1-1.

You have described the benefits of using the telephony software as “lower[ing] the cost of equipment, ensur[ing] interoperability between agencies, lower[ing] the risk of personnel error when transfers are required and reduc[ing] the risk that the wireless call will be dropped before it is answered.” Software that improves a 9-1-1 system’s ability to receive a wireless call and to route the wireless call to an appropriate PSAP while providing accurate information about the location from where the call is being made strengthens a 9-1-1 system’s provision of wireless enhanced 9-1-1. *See* Dale N. Hatfield, *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services* 5, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513296239 (“two things must happen in [enhanced 9-1-1]: the voice call must be routed to the correct PSAP – the one serving the geographic area where the caller is located – and the location ... information must be delivered to the PSAP”). The cost of purchasing such software, therefore, appears to be precisely the type of cost for which moneys disbursed from the wireless 9-1-1 government assistance fund is intended to be used.

Therefore, to the extent that the telephony software enables the PSAPs in a countywide 9-1-1 system to receive a wireless 9-1-1 call along with information identifying the number associated with the call and the call’s location, the software is used by the PSAPs in a countywide 9-1-1 system to provide wireless enhanced 9-1-1. So long as the software is necessary software that is required to enable the PSAPs in the countywide 9-1-1 system to provide wireless enhanced 9-1-1, the cost of purchasing that software may be paid with moneys disbursed from the wireless 9-1-1 government assistance fund. R.C. 128.57(A)(1). There is no requirement in R.C. 128.57(A)(1) that the software be installed on equipment located in the same building as the personnel who respond to 9-1-1 calls that are routed to the PSAPs in the 9-1-1 system. It is sufficient that the software is utilized in a 9-1-1 system in a way that enables PSAPs to provide wireless enhanced 9-1-1.

Whether the particular telephony software described in your letter is indeed necessary software that is required to enable the PSAPs of the countywide 9-1-1 system in Summit County to provide wireless enhanced 9-1-1 depends upon how the software operates in the countywide 9-1-1 system and the current capabilities of the countywide 9-1-1 system. These are questions of fact. The formal opinion process is not amenable to making factual determinations. *See* 1999 Op. Att’y Gen. No. 99-050, at 2-310.

The determination of whether particular telephony software is necessary software that is required to enable PSAPs to provide wireless enhanced 9-1-1 shall be made by local officials who are

qualified and authorized to make it. *See* R.C. 128.03(D)(1) (“[e]ach public safety answering point shall be operated by a subdivision or a regional council of governments”); R.C. 128.03(D)(2) (“[a] subdivision or a regional council of governments that operates a public safety answering point shall pay all of the costs associated with establishing, equipping, furnishing, operating, and maintaining that facility and shall allocate those costs among itself and the subdivisions served by the answering point based on the allocation formula in a final plan”); R.C. 128.07(B)(2) (a final plan shall state whether a PSAP shall provide enhanced 9-1-1); *see also* 1999 Op. Att’y Gen. No. 99-050, at 2-310. Those officials have access to information concerning the manner in which the telephony software operates within the larger context of the countywide 9-1-1 system. The Attorney General will not exercise, in an opinion, discretion that has been vested in another officer. 2009 Op. Att’y Gen. No. 2009-048, at 2-357 (“the Attorney General is not authorized to use the opinion-rendering function to exercise on behalf of a public official discretion that has been reposed in that official”).

A decision to purchase telephony software shall be made in accordance with the final or amended plan for implementing a countywide 9-1-1 system and the technical and operational standards for PSAPs set by the Statewide Emergency Services Internet Protocol Network Steering Committee pursuant to R.C. 128.021. *See* R.C. 128.07(B)(2) (the final plan of a countywide 9-1-1 system shall state “whether basic or enhanced 9-1-1 service will be provided within [each PSAP’s] territory”); R.C. 128.12(A)(6) (“[a]n amended final plan is required for ... [p]roviding for wireless enhanced 9-1-1”); R.C. 128.57(A)(1) (“a regional council of governments operating a public safety answering point or a subdivision shall consider the standards [established by the steering committee] before incurring any costs described in [R.C. 128.57(A)(1)]”); R.C. 128.57(E)(1) (“[n]o disbursement to a countywide 9-1-1 system for costs of a [PSAP] shall be made from the wireless 9-1-1 government assistance fund or the next generation 9-1-1 fund unless the [PSAP] meets the standards set by rule of the steering committee under [R.C. 128.021]”).

In summary, moneys disbursed to a county from the wireless 9-1-1 government assistance fund pursuant to R.C. 128.55 may be used to purchase telephony software, provided the software is necessary software that is required to enable the PSAPs in the countywide 9-1-1 system to provide wireless enhanced 9-1-1. To receive a disbursement of moneys pursuant to R.C. 128.55(A) to pay the costs incurred by PSAPs that provide wireless enhanced 9-1-1, the PSAPs in the countywide 9-1-1 system shall conform to the technical and operational standards established by rule of the Statewide Emergency Services Internet Protocol Network Steering Committee. R.C. 128.57(E)(1); R.C. 128.57(E)(2) (“[t]he steering committee shall monitor compliance with the standards and shall notify the tax commissioner to suspend disbursements to a countywide 9-1-1 system that fails to meet the standards”). To receive the full amount of moneys that may be disbursed to a county pursuant to R.C. 128.55(A), the disbursed moneys may be used to pay the cost of purchasing the software for the allowable number of PSAPs set forth in R.C. 128.571(A) and (B). If the moneys disbursed pursuant to R.C. 128.55(A) are used to pay the cost of purchasing and installing the software for the PSAPs in a countywide 9-1-1 system that are in excess of the allowable number set forth in R.C. 128.571(A) and (B), the amount of moneys disbursed to the county will be reduced by fifty percent. R.C. 128.571(C).

Your letter states that by January 1, 2016, the number of wireless PSAPs in Summit County for which disbursed moneys will be used will be five, in compliance with the allowable number of wireless PSAPs set forth in R.C. 128.571(B). Accordingly, in order for Summit County to receive the full amount of moneys that it may receive under R.C. 128.55(A), the disbursed moneys may be used to pay the cost of purchasing the telephony software that is incurred by only those five wireless PSAPs. This means that for Summit County to receive a full disbursement of moneys, only so much of the cost of purchasing the telephony software for the countywide 9-1-1 system as is attributable to the five wireless PSAPs may be paid with moneys disbursed from the wireless 9-1-1 government assistance fund.

We now turn to the second part of your question. You explain that the telephony software Summit County wishes to purchase operates as a “virtual PSAP” by routing 9-1-1 calls to a geographically appropriate PSAP in the countywide 9-1-1 system without the use of personnel. R.C. 128.01(P) defines a PSAP as “a *facility* to which 9-1-1 system calls for a specific territory are *initially routed for response* and where *personnel respond* to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider.” (Emphasis added.) Comparing the function of the telephony software and the definition of a PSAP provided in R.C. 128.01(P), you question whether the cost of purchasing the telephony software is an expense that may be paid with moneys disbursed to a county from the wireless 9-1-1 government assistance fund when the “virtual PSAP” is not operated by personnel and, therefore, does not constitute a PSAP as that term is defined in R.C. 128.01(P).

The term “virtual PSAP” is neither defined nor used in R.C. Chapter 128. “Virtual PSAP” also has not acquired a uniform technical meaning. For example, the term may be used to refer to a next generation 9-1-1 system where personnel are able to perform PSAP services without reporting to a building. See NENA, *Virtual PSAP Management Operations Information Document (OID)*, Document 53-507, 7 (May 26, 2009), http://c.ymcdn.com/sites/www.nena.org/resource/collection/88EE0630-CA27-4000-BAA7-24FFA3F9029A/NENA_53-507_V1_Virtual_PSAP_Management.pdf (“[a] PSAP is no longer required to be in a specific single-site physical location, or at least not all of their workers need be in a single physical location”). Alternatively, the term “virtual PSAP” may be used to refer to a system in which all the PSAPs “coordinate resources and capabilities[.]” Donny Jackson, *How Many PSAPs Do We Need? O’Rielly’s Challenge Could Portend a New Era for 911 Operations*, Urgent Matters Blog (Feb. 3, 2015), <http://urgentcomm.com/blog/how-many-psaps-do-we-need-o-rielly-s-challenge-could-portend-new-era-911-operations>. Such coordination may occur, for example, when “a call-taker from PSAP A can handle calls in PSAP B without physically being at PSAP B [which would be helpful] when PSAP B has heavy call volumes or is missing personnel due to sickness or vacation.” *Id.* The concept of a “virtual PSAP” has also been explained as follows:

By introducing IP [(internet protocol)] connectivity, PSAPs can quickly and easily accommodate unpredictable volume increases with the creation of a virtual PSAP construct.

An IP-enabled PSAP has the ability to create automated routing rules that leverage the IP infrastructure to systematically redirect calls to other PSAPs on the shared network when call volume increases to a predetermined level. By using this type of virtual construct, call takers at back-up PSAPs can function as triage agents while call takers at the home PSAP can direct their time and attention to the calls that require actual emergency assistance.

This type of IP-based load sharing is particularly helpful for PSAPs that may have to transfer calls to a neighboring PSAP in a different local access and transport area (LATA), such as across county or state lines. In the legacy system, if PSAPs do not share the same LATA, essential location information will not automatically transfer with the call. IP connectivity solves this problem because location information is embedded in the call and will travel with a transferred call no matter where the receiving PSAP is located.

Intrado, *Next-Generation 9-1-1: The Essential Guide to Getting Started*, Vol. 3, 5, http://www.intrado.com/sites/default/files/documents/Volume%203%20IP-Enabled%20PSAP_0.pdf.

In order for moneys disbursed from the wireless 9-1-1 government assistance fund to be used to purchase software for a countywide 9-1-1 system, the software shall be required to enable the PSAPs in the countywide 9-1-1 system to provide wireless enhanced 9-1-1. R.C. 128.57(A)(1). The process of automatically routing a 9-1-1 call to an appropriate PSAP based upon the location of the call is “selective routing,” which is a significant capability that makes enhanced 9-1-1 different from basic 9-1-1. Dale N. Hatfield, *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services* 5, available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513296239; Philip J. Weiser, Dale Hatfield, Brad Bernthal, *The Future of 9-1-1: New Technologies and the Need for Reform*, 6 J. Telecomm. & High Tech. L. 213, 228-29 (2008) (“it is the Selective Router function that distinguishes basic wireline 9-1-1 from [enhanced 9-1-1]”). By automatically routing a 9-1-1 call based upon the call’s location, the software does not perform the essential function of a PSAP, which is to receive a 9-1-1 call for the purpose of responding to the call in order to have emergency services dispatched. *See* R.C. 128.01(P). The software also is not a substitute for the PSAPs in the countywide 9-1-1 system.

The description of the telephony software provided in your letter leads us to conclude that the software is the mechanism by which a PSAP receives a 9-1-1 call based upon the call’s location. Specifically, the software performs the function of selective routing, that is, routing a 9-1-1 call to a geographically appropriate PSAP. *See* PSAP Operations Sub-committee Report to Ohio ESINet Steering Committee (Nov. 19, 2015), <http://911.ohio.gov/Portals/0/ESINet%20Steering%20Committee/Sub-committeeReport111915.pdf> (“[t]he sub-committee believes that a single set of servers that distribute calls to multiple answering locations is actually part of the routing process, much like a legacy selective router is today. The sub-committee believes the call is not responded to until answered by trained staff”). Telephony software that routes a wireless 9-1-1 call to an appropriate PSAP need not constitute a PSAP, as that term is defined in R.C. 128.01(P), in order for the cost of purchasing and installing that software to be paid with moneys disbursed from the wireless

9-1-1 government assistance fund. So long as the software is necessary software that is required to enable the PSAPs in a countywide 9-1-1 system to provide wireless enhanced 9-1-1, the cost of purchasing the software may be paid with moneys disbursed from the wireless 9-1-1 government assistance fund. R.C. 128.57(A)(1).

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Moneys disbursed to a county from the wireless 9-1-1 government assistance fund pursuant to R.C. 128.55 may be used to purchase telephony software, provided the software is necessary software that is required to enable the public safety answering points in the countywide 9-1-1 system to provide wireless enhanced 9-1-1.
2. A county may receive the full amount of moneys that may be disbursed to it from the wireless 9-1-1 government assistance fund, provided the costs paid with disbursed moneys are only those costs that are incurred by the number of public safety answering points set forth in R.C. 128.571(A) and (B) that provide wireless enhanced 9-1-1. (2015 Op. Att’y Gen. No. 2015-035, syllabus, clarified.)

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is fluid and cursive, with a long horizontal stroke at the end.

MICHAEL DEWINE
Ohio Attorney General