

In the matter of Georgia EMS Ambulance, Inc.

FINAL AGENCY DECISION

The Office of Emergency Medical Services of the Department of Public Health placed Georgia EMS Ambulance, Inc. on probation for twelve months and imposed a fine of \$6000 for six violations of the Department's regulations governing ambulance services. Georgia EMS Ambulance, Inc. petitioned for administrative review, and the matter was referred to the Office of State Administrative Hearings in accordance with O.C.G.A. § 50-13-41(a). The case was assigned to Judge Stephanie M. Howells¹, who conducted an evidentiary hearing and wrote a 21-page initial decision affirming the Department's actions. The matter now returns to the Department for final decision in accordance with O.C.G.A. § 50-13-41(e). I have been appointed review officer to act on behalf of the Department.

Having read the complete record of the OSAH proceedings, I find that Judge Howells has satisfactorily resolved the issues raised in the Petitioner's "Application for Agency Review." Her findings of fact are firmly grounded in the testimony of the witnesses and the documentary evidence of record, her legal conclusions are thoroughly researched and well reasoned, and her interpretation of the Department's regulations is right on target.² I cannot improve upon her opinion, and it is hereby adopted in its entirety as the final decision of the Department, as supplemented by the following comments.

¹ I note that Judge Howells, a former cardiac nurse, was uniquely qualified to decide the issues presented by this case.

² Especially Conclusion of Law #7. Petitioner's argument that the zone provider had "approved" its transport of a patient merely by backing down from a confrontation would, if accepted, only encourage unauthorized ambulances to speed to the scene of a call and engage in the sort of competitive foot race that occurred on 8 May 2012. [See transcript at pp. 174 – 181] That is *exactly* the kind of "chaotic circumstances" that the EMS zoning laws and this Department's regulations seek to prevent.



As to Petitioner's due process arguments, it makes no claim that it was not given notice of the charges and an opportunity to be heard. The record shows that Petitioner was given specific notice of the charges and the sanctions to be imposed. It was given a full and fair opportunity to be heard, and made the most of it. Petitioner has received all the due process that the Constitution requires in the context of administrative decision-making.³ See *Dep't of Transportation v. Del-Cook Timber Co.*, 248 Ga. 734, 739-740 (1982).

As to the General Assembly's alleged infringement of the City of Kennesaw's powers under Article 9, Section 2, Paragraph III, neither I nor anyone at this Department may hold a statute to be unconstitutional. That power lies solely in the judiciary. However, I will offer the following observations for the benefit of any reviewing court. To begin with, I question Petitioner's standing to complain.⁴ The City itself complied when instructed to discontinue its 9-1-1 dispatch system. [See Respondent's Exhibit 9, transcript at pp. 329-331] The Constitutional provision cited by Petitioner was not intended to benefit ambulance companies, and does not purport to endow them with any rights, much less the right to handle 9-1-1 dispatches in a particular area. See, e.g., *Granite State Outdoor Advertising, Inc. v. City of Roswell*, 283 Ga. 417, 418-9 (2008).

Moreover, Subsection (c) of Article 9, Section 2, Paragraph III plainly allows the General Assembly to enact reasonable measures in the interest of public safety, such as the establishment of exclusive ambulance zones for emergency dispatch, which are intended to prevent the dangerous and disorderly spectacle of competing ambulance services racing to the scene of a 9-1-1 call and arguing over which of them will transport the patient. [See transcript at pp. 19-21, 67, 146-7, 165-8] Power has not been "withdrawn" from municipalities and counties seeking to contract for ambulance services. On the

³ Petitioner further claims that "O.C.G.A. § 50-13-13 and O.C.G.A. § 31-11-56 provide that a hearing is to be requested by the agency within 20 days of the appeal being filed." I find no such requirement in those statutes.

⁴ Although Petitioner has the right to ask the local EMS council to reopen the zoning process, so as to submit a bid to become an authorized zone provider, it has never done so. [See transcript at p. 25]

contrary, municipalities and counties remain free to contract with ambulance providers for any other ambulance services they choose, just as citizens remain free to directly request ambulance service from the provider of their choice. [See transcript at pp. 17-18, 140, 142] In addition, the record shows that county and municipal governments participate "very actively" in establishing zoning plans and recommending ambulance companies to serve as zone providers, and that county and municipal governments can and do ask their regional EMS council to reopen a zoning plan. [See transcript at pp. 25-6]

Those facts also militate against Petitioner's claim that the Department's EMS system violates Georgia's public policy against monopolies. Petitioner misunderstands the nature and limited scope of the EMS 9-1-1 emergency dispatch system. Ambulance providers bid to be designated a zone provider and respond to 9-1-1 dispatches issued for a given zone, and are chosen on their merits. [See transcript at pp. 24-25] The successful bidder is no more a "monopolist" than is a construction contractor who successfully bids on a public highway project. As noted above, competing ambulance services are free to operate in the zone for any and all purposes other than responding to 9-1-1 dispatches.⁵ See, e.g., *Exposition Enterprises, Inc. v. George L. Smith II World Congress Center Authority*, 177 Ga. App. 211, 214-215 (1985).

The decision of the Office of Emergency Medical Services of the Department of Public Health to place Georgia EMS Ambulance, Inc. on probation for twelve months and impose a fine of \$6000 is hereby **affirmed**.

This 7th day of March, 2013.



Sidney R. Barrett, Jr.
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⁵ In this regard, Petitioner's Director of Operations testified that his company currently provides ambulance services in EMS Region 3 that are unrelated to the 9-1-1 emergency dispatch system, both under contract to private entities such as nursing homes and hospitals, and at the direct request of individuals. [See transcript at pp. 311, 313, 317] Nothing in this decision or in the Department's regulations prohibits Petitioner from continuing to do so.