



STOLL
KEENON
OGDEN

STATE & FEDERAL TAX PRACTICE

Timothy Eifler
Louisville
502.560.4208
Timothy.Eifler@skofirm.com

Erica L. Horn
Lexington
859.231.3037
Erica.Horn@skofirm.com

Jennifer S. Smart
Lexington
859.231.3619
Jennifer.Smart@skofirm.com

Jackson White
Lexington
859.231.3617
Jackson.White@skofirm.com

Will Kentucky Local Governments' Use of New Methods to Fund 911 Services Survive Judicial Challenge?

Erica Horn and Maddie Schueler

Campbell County in Northern Kentucky has become the latest Kentucky County to enact local legislation seeking to fund 911 services by non-traditional means. Historically, 911 services in Campbell County have been funded by a \$3.00 per month subscriber charge imposed upon landline telephones. Like other counties, Campbell County has experienced a decrease in funding due to the replacement of land lines with wireless telephones and other new technology. The Campbell County Fiscal Court concluded that the \$3.00 subscriber charge is no longer sufficient to provide reliable emergency communication services.

As a result, on August 7, 2013, the Campbell County Fiscal Court adopted Ordinance O-04-13, which replaces the subscriber charge with an annual fee of \$45.00 imposed upon each occupied individual residential and commercial unit located on real property in Campbell County. The ordinance has sparked considerable criticism, and on September 12, 2013, a civil action was commenced in Campbell Circuit Court challenging the legality of the ordinance. The lawsuit was filed by the Greater Cincinnati/Northern Kentucky Apartment Association, in conjunction with multiple owners of individual commercial and residential units located in Campbell County.

The lawsuit seeks to have the ordinance declared void *ab initio* because it levies an unauthorized and unconstitutional fee or tax. The plaintiffs assert there are four legally prescribed methods by which a political subdivision in Kentucky, such as Campbell County, may collect funds from its residents: (1) special assessments; (2) regulatory fees and taxes; (3) user fees; and (4) revenue-raising fees and taxes, and the imposition of a flat fee (of \$45.00 on owners of real property, does not satisfy the criteria of any of the four methods. The lawsuit seeks to have the 911 fee declared unconstitutional and to enjoin Campbell County from collecting the fee.

The authors' law firm represents the plaintiffs in this litigation.