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Forestry - Firemen -
Liability Insurance

Volunteer fire departments should have liability insurance on motor vehicles placed in their possession by the State Forestry Commission. Discussion of liability of State Forestry Commission, county governing bodies and volunteer fire departments with reference to negligent actions by members of the volunteer fire department.

Dear Senator Proctor:

The Office of the Attorney General has received your opinion request. In the request you explain that the Alabama Forestry Commission provides motor vehicles to the various volunteer fire departments in the State to be used for fire fighting techniques. You say that technically these vehicles are placed in the possession of the County Commission of the county where the volunteer department is located. You request an opinion as to whether or not a volunteer fire department must have liability insurance on these motor vehicles. You also ask that the opinion address the liability of the State Forestry Commission, County governing body and volunteer fire department with reference to negligent actions on the part of a member of the volunteer fire department.

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A brief synopsis of the applicable statutory and case law is necessary to answer the question of whether or not a volunteer fire department must have liability insurance on the motor vehicles placed in its possession by the Alabama Forestry Commission. Code of Alabama 1975, § 11-88-15, grants legislative immunity from tort actions to fire protection authorities organized pursuant to Code of Alabama 1975, § 11-88-1, et seq. It provides that:

The authority shall not be liable for any tort whether negligent or willful, committed by any director, agent, servant, or employee of the authority in the furnishing of fire protection service or in the construction, maintenance or operation of any fire protection facility. (Emphasis supplied).

Code of Alabama 1975, § 11-89-15, grants the same legislative immunity to fire protection districts organized pursuant to Code of Alabama 1975, § 11-89-1, et seq. As you will note, this immunity has not been extended to the individual members or agents of these organizations.

Code of Alabama 1975, § 6-5-335, grants limited immunity to members of volunteer nonprofit fire departments. It provides that:

When any member of any organized rescue squad or volunteer nonprofit fire department, gratuitously and in good faith, enters any building, house or structure which is burning or endangered by fire and makes efforts to preserve and protect said property and any other property contained therein or located on the premises thereof, such members shall not be liable

for any civil damages for such entering or as result of any acts or omissions in rendering such efforts; nor shall such members be liable for any civil damages in rendering such efforts for their acts or omissions causing injuries to fellow volunteers or to owners of said property; provided, however, that this section shall not apply to civil damages for wanton misconduct. (Acts 1976, No. 675, p. 925; 1979, No. 79-625, p. 1107.)

Section 6-5-335 does not appear to protect members of volunteer fire departments in their operation of motor vehicles on route to fires. Furthermore, it does not apply to civil actions for damages due to wanton misconduct.

A recent Alabama Supreme Court case, Weeks v. East Alabama Water, Sewer and Fire Protection District, 401 So.2d 26 (Ala. 1981), dealt with the issue of immunity for volunteer fire protection districts and their members. Weeks involved negligence by a member of a fire department which caused loss to the property on which the fire occurred. The Court held that the fire protection district was afforded immunity from tort liability by § 11-89-15. However, it did not find that the individual member of the fire department was also afforded this immunity. Rather, it held that whether or not an individual member would be granted immunity because of §§ 11-89-15 and 6-5-335 would depend on the factual situation. It should be noted that this case did not deal with the question of liability for the operation of motor vehicles on route to fires.

This office is aware of the high cost involved in providing insurance coverage for these high risk vehicles. However, in light of the above statutory and case law, we are compelled to state that in our opinion volunteer fire departments should have liability

insurance on these vehicles in order to protect the members and agents of the departments. Our statement is based on the fact that although the fire protection districts and authorities have been granted immunity from tort liability, and the members of these organizations have been granted limited immunity in some areas, as yet, there has been nothing extending this immunity to cover members of volunteer fire departments in their operation of motor vehicles on route to fires.

You also request that we address the liability of the State Forestry Commission, county governing body and volunteer fire department with reference to negligent actions on the part of a member of a volunteer fire department. We will begin with the liability of the State Forestry Commission. Constitution of Alabama 1901, Article I, § 14, provides: "That the State of Alabama shall never be made a defendant in any Court of law or equity." This immunity extends to the Alabama Forestry Commission as it is an instrumentality of the State. City of Foley v. Terry, 278 Ala. 30, 175 So.2d 461 (1965). The members of the State Forestry Commission are also protected from suit in their official capacity except for acts "allegedly committed fraudulently, in bad faith, beyond their authority, or under a mistaken interpretation of the law." Carter v. Forester, 395 So.2d 63, 64 (Ala. Civ. App. 1980).

As to the liability of the County governing body, Code of Alabama 1975, § 11-1-2 provides that "[Every] county is a body corporate, with power to sue or be sued" Recent cases have interpreted this section as allowing "suits against counties, and their governing bodies--the county commissions and commissioners in their official, but not in their individual capacity, in tort. . . ." Thus, it is our opinion that the county commissions and commissioners in their official capacity could be liable in tort for negligent actions on the part of members of these volunteer fire departments. This is particularly so since the motor vehicles are technically placed in the possession of the various county commissions.

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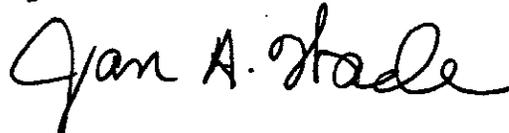
Finally, it is our opinion that the volunteer fire departments would be protected from suit due to Code of Alabama 1975, §§ 11-88-15 and 11-89-15. However, as previously discussed, this immunity has not been extended to the individual members or agents of these organizations.

It should be noted that the law in Alabama pertaining to sovereign immunity and good faith immunity, etc., is in a current state of change. See, Bell v. Chisom, [Ms. 80-555, July, 1982, reh. denied, Dec. 1982], and DeStafney v. University of Alabama, 413 So.2d 391 (Ala. 1981). This office is unsure what the final state of the law will be. Therefore, all statements concerning immunity in this opinion are based on the law as it presently stands.

I do hope this response sufficiently answers your inquiry. If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



JAN A. WADE
Assistant Attorney General

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