

# OFFICE OF THE ATTORNEY GENERAL

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Mayor William C. McPherson  
P. O. Box 148  
Summerdale, AL 35680

Municipalities - Fire Departments  
Funds - Employees, Employers,  
Employment

The supervision of the Summerdale Volunteer Fire Department Chief depends upon the nature of the relationship between the Town of Summerdale and the Fire Department. Fire Department cannot restrict membership to males only, but may charge fees for membership. Firemen can be paid an expense allowance for attending meetings and fires.

Dear Mayor McPherson:

We have received your request for an opinion from this office. Your questions are as follows:

Is the fire chief subject to supervision of the Mayor and Council?

Does the Mayor and Council control funds received by the fire department, such as donations, etc.?

Can the fire department restrict membership to males only?

Is charging of fees for membership legal?

Authority to disband and funds on hand in case of disbandment?

Paying firemen for attending meetings and fires?

The supervision of the fire chief would depend on the nature of the relationship between the fire department and the Town of Summerdale. If the fire department is recognized or sanctioned by the Town of Summerdale, then the fire chief would be subject to the Mayor and Council's supervision. If the fire department is not recognized by the Town of Summerdale, the fire chief would be subject to supervision as set forth in the fire department's constitution. It should be noted that if the Town of Summerdale furnishes equipment, property, etc. for the fire department, then the Mayor and Council could put conditions on its use.

Your second question is similar to questions considered in opinions of the Attorney General to Mayor Mack A. Jordan of Excel dated September 6, 1985 and to Ms. C. Eleanor Byrd, Town Clerk - Treasurer of Silverhill, dated December 18, 1984. In those opinions, the conclusion was reached that whether funds collected by a volunteer fire department are municipal funds depends on whether the volunteer firemen are part of a municipally sanctioned fire department. The following quote from the Silverhill opinion answers your second question:

"The answer to your question depends on the nature of the group soliciting the funds. If the Town of Silverhill Volunteer Fire Department is recognized or sanctioned by the Town of Silverhill then funds collected by that agency become municipal funds. If solicited by an organization of volunteers not directly tied to or connected with the municipality then these funds would become those of the organization."

Your third question regards restricting membership to males only. It is noted that your bylaws were adopted in 1961. Since that time, new legislation and court rulings have developed which would make that restriction void by operation of law. Therefore, the fire department may not restrict membership to males only.

Your fourth question concerns charging fees for membership. Your bylaws state members shall pay a fee of \$2.00 a year. The charging of fees is not prohibited by law. Therefore, it is proper for the Summerdale Volunteer Fire Department to charge a reasonable fee for membership.

The Summerdale Volunteer Fire Department Bylaws provide the authority for disbanding. In regard to the funds, Code of Alabama, § 9-3-18(b) (1985 Cum. Supp.) states:

(b) The state, any county, any municipality, any fire, water, sewer, garbage or school district, or any other public governmental entity or political subdivision is hereby authorized to donate money, property, equipment or other thing of value to any organized voluntary fire department or organized voluntary rescue squad. If disposed of it will return to the agency where it was obtained.

Therefore, any money, equipment, etc. that is identifiable as coming from a certain agency must be returned to such agency. Otherwise, the property may be turned over to another organization or charity, preferably one with a similar function or purpose as the volunteer fire department.

In order to be classified as a "volunteer fire department" under Code of Alabama 1975, § 9-3-17, there must be no less than 80 percent unsalaried membership in each department. However, the money received for attending meetings and fires must be considered expense payments rather than salary or other forms of compensation. Therefore, the Summerdale Volunteer Fire Department may pay firemen an expense allowance for attending meetings and fires.

I hope this sufficiently answers your questions. If, however, we may be of further service, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK  
ATTORNEY GENERAL

By:



ALICE ANN BOSWELL  
ASSISTANT ATTORNEY GENERAL