

OFFICE OF THE ATTORNEY GENERAL



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Honorable Phillip L. Hicks
Director
Emergency Management Agency
5898 County Road 41
Clanton, AL 35045-5160

Emergency Management Agency -
Engineers - Volunteers -
Volunteer Service Act -
Liability

Volunteer Service Act,
Section 6-5-336 confers
immunity from civil liability
for volunteer acting in good
faith and within scope of
official functions and duties
for nonprofit organization,
nonprofit corporation,
hospital or governmental
entity where damage or injury
not caused by willful or
wanton misconduct.

Dear Mr. Hicks:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTIONS

Does the Alabama Volunteer Service Act
found at § 6-5-336, or any other
provision of Alabama law, provide total or
qualified immunity for individuals who
render emergency volunteer services
directly and not through a nonprofit
organization?

Would inclusion of the names of certain volunteers on a nonprofit organization's "emergency volunteer registry" place such volunteers "within the scope . . . of official functions and duties . . ." within the meaning of Section 6-5-336, Subsection (d)(1)?

FACTS, LAW AND ANALYSIS

The Volunteer Service Act, codified as Section 6-5-336, Code of Alabama 1975, as last amended, originated as Act No. 91-439, is effective as to any civil suit for damages commenced on or after 180 days from the date of enactment regardless of whether the claims arose prior to the date of enactment.

The pertinent portions of the Act are as follows:

"§ 6-5-336(b). The legislature finds and declares that:

"(1) The willingness of volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers;

"(2) The contributions of programs, activities and services to communities is diminished and worthwhile programs, activities and services are deterred by the unwillingness of volunteers to serve either as volunteers or as officers, directors or trustees of nonprofit public and private organizations;

"(3) The provisions of this section are intended to encourage volunteers to contribute their services for the good of their communities and at the same time provide a reasonable basis for redress of claims which may arise relating to those services."

In Subsection (c)(4), the term "volunteer" is defined as:

"(A) A person performing services for a nonprofit organization, a nonprofit corporation, a hospital, or a governmental entity without compensation, other than reimbursement for actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee or direct service volunteer."

Section (d) provides:

"Any volunteer shall be immune from civil liability in any action on the basis of any act or omission of a volunteer resulting in damage or injury if:

"(1) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for a nonprofit organization, a nonprofit corporation, hospital or governmental entity; and

"(2) The damage or injury was not caused by willful or wanton misconduct by such volunteer."

Another provision of law relating to the liability of officers of nonprofit organizations is found at § 10-11-1, et seq., Code of Alabama 1975. In that statute we find the following:

"The legislature finds and declares that the services of non-for-profit corporations, organizations, associations, boards, authorities and commissions are critical to the efficient conduct and management of public, civic and charitable affairs of the citizens of this state. Non-compensated officers, directors, trustees and members of governing bodies of such not-for-profit entities must be permitted to operate without undue concern for the possibility of litigation arising from the discharge of their duties as policy makers."

In Section 10-11-3 we find:

"Any non-compensated officer of a qualified entity shall be immune from suit and not subject to civil liability arising from the conduct of the affairs of such qualified entity except when the act or omission of such officer, which gives rise to a cause of action, amounts to willful or wanton misconduct or fraud, or gross negligence. Provided however, such immunity shall not, except to such extent as may otherwise be provided by law, extend to the qualified entity, to a for-profit subsidiary of such qualified entity or the officers of such for-profit subsidiary but only to the qualified entity's officers as defined in this chapter. Nothing contained herein shall be construed to immunize the corporate entity or qualified entity for the acts or omissions of non-compensated officers as defined in this chapter."

Section 10-11-2 defines "qualified entity" as a not-for-profit corporation, association or organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code of 1954, or which is organized pursuant to Section 10-3A-1, et seq., Code, and certain organizations under certain stated statutes, and boards, authorities, commissions, the members of which are appointed by the governing body or bodies of any county or municipality or by the governor or other constitutional officer or member of the legislature pursuant to legislative or constitutional authorization or the members of which are constitutionally or legislatively delegated.

A careful review of these two statutes indicates that there is no legislative provision for immunity for individuals rendering emergency volunteer service directly and not through a nonprofit organization or governmental entity.

Doctors of medicine or dentistry, nurses, members of organized rescue squads, police departments or fire departments, and others set forth in the statute who gratuitously and in good faith render first aid or emergency care at the scene of an accident, are immune for civil damages pursuant to § 6-5-332, Code, the so-called Good Samaritan Act. Since your question arises from a consideration of the liability of engineers volunteering to

assist your agency in damage assessment and surveys following a natural disaster, the Good Samaritan Act just referred to does not apply. Accordingly, your first question must be answered in the negative.

Your agency, the Alabama Emergency Management Agency, is obviously a governmental entity, and a volunteer performing services for your agency without compensation other than reimbursement for actual expenses incurred, would fall within the purview of the statute and is therefore immune from civil liability so long as such volunteer acts in good faith and within the scope of the volunteer's official functions and duties for your agency, and the damage or injury is not caused by willful or wanton misconduct by such volunteer.

CONCLUSION

The Alabama Volunteer Service Act, § 6-5-336, Code of Alabama 1975, does not provide immunity for individuals who render emergency volunteer services directly and not through a nonprofit organization, and we know of no other provision of Alabama law that would apply in regard to engineers assisting the Alabama Emergency Management Agency in damage assessments and surveys following a natural disaster. However, volunteers working through the Alabama Emergency Management Agency would fall within the purview of the Alabama Volunteer Service Act, § 6-5-336, Code of Alabama 1975.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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