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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Kenneth Hammond  
Mayor, Town of Valley Head  
Post Office Box 144  
Valley Head, Alabama 35989

Volunteers - Fire Departments -  
Municipalities - Police Powers - Police  
Jurisdiction - Liabilities

Pursuant to their authority to protect the health, safety, and welfare of the public, volunteer fire departments may enter private property to extinguish a fire. Volunteer, nonprofit fire departments acting gratuitously and in good faith are entitled to immunity provided in section 6-5-335 of the Code of Alabama. The liability of firefighters, fire departments, and municipalities, in general, however, can only be determined by a court of competent jurisdiction.

Dear Mayor Hammond:

This opinion of the Attorney General is issued in response to your request on behalf of the Town of Valley Head.

QUESTIONS

What authority, if any, does the volunteer fire department organized and sanctioned by the Town of Valley Head have to enter onto private property for the purpose of responding to a fire call? Are we exposing the firefighters individually or the Town of Valley Head to liability when equipment crosses private property to perform our public safety functions of suppressing wild fires and other fires?

### FACTS AND ANALYSIS

Your request describes a particular fact situation that is of concern to the firefighters and the town. You state that the department was recently dispatched by the county emergency management district to a woods fire within the town's police jurisdiction and service area. The fire was threatening a nearby home. In order to get to the area where the fire was located, it was necessary for the department to open a gate and cross a pasture owned by a local citizen. The owner of the pasture confronted the department and accused the department of damaging his pasture and trespassing. The only damage that may have occurred to the pasture was the ruts in the soil made by the fire truck crossing the soft soil of the pasture. The landowner advised that he does not want the fire department on his property in the future, regardless of the type of fire involved.

Municipalities are authorized to maintain and operate volunteer fire departments and "may do any and all things necessary to secure efficient service." ALA. CODE § 11-43-140 (1989). Municipalities may also provide assistance to organized volunteer fire departments, as these organizations are deemed public in nature and protect the health, safety, and welfare of the public. ALA. CODE § 9-3-18 (Supp. 2000). Municipal fire departments have the authority to respond to fires in the police jurisdiction. ALA. CODE § 11-43-141 (1989). Any acts performed in the police jurisdiction for the purpose of fire fighting "shall be deemed conclusively to be for a public and governmental purpose and all of the immunities from liability enjoyed by a city or town when acting through its firemen for a public or governmental purpose within its corporate limits and police jurisdiction shall be enjoyed by it to the same extent when such city or town is so acting under this section or under other lawful authority beyond its corporate limits." The firemen are also entitled to immunities from liability while performing their duties in the police jurisdiction. *Id.* Generally, firemen may enter private property for the purpose of performing their duties and are not liable for trespass. McQuillin, *Municipal Corporations*, 3<sup>rd</sup> edition, § 45.29. The Alabama Supreme Court has held that public officers and private citizens may enter private property, without incurring liability, when necessary in emergency situations to protect the public good. *Wheat v. Ramsey*, 284 Ala. 295, 224 So. 2d 649 (1969) and *Phoenix Assur. Co. of London v. Fire Dept. of City of Montgomery*, 117 Ala. 631, 23 So. 843 (1898).

Limited immunity is granted to members of a volunteer fire department by section 6-5-335 of the Code of Alabama. *Junkins v. Glencoe Volunteer Fire Department*, 685 So. 2d 769 (Ala. Civ. App. 1996) and Opinion to Honorable

William Crowe, Mayor, Town of Valley Head, dated May 24, 1991, A.G. No. 91-00260. Section 6-5-335 states:

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.

ALA. CODE § 6-5-335 (1993). Limited immunity is also granted to volunteers pursuant to section 6-5-336 of the Code of Alabama, which states in pertinent part:

(d) 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 a governmental entity; and

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

ALA. CODE § 6-5-336 (1993). Both of these sections grant immunity to volunteer firefighters, acting gratuitously and in good faith, but do not protect them from actions for wanton or willful acts.

A municipality may be held liable for the unauthorized acts, negligence, carelessness, or unskillfulness of persons acting on behalf of the municipality. ALA. CODE § 11-47-190 (Supp. 2000).

The liability, if any, of a volunteer firefighter, a fire department, or a municipality depends upon all the facts and circumstances in each particular case and, thus, is determined on a case-by-case basis. Only a court of competent jurisdiction can make the final determination as to whether any liability exists in a particular case.

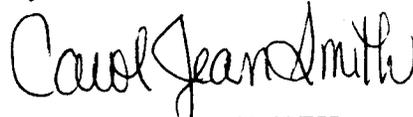
CONCLUSION

Pursuant to their authority to protect the health, safety, and welfare of the public, volunteer fire departments may enter private property to extinguish a fire. Volunteer, nonprofit fire departments acting gratuitously and in good faith are entitled to immunity provided in section 6-5-335 of the Code of Alabama. The liability of firefighters, fire departments, and municipalities, in general, however, can only be determined by a court of competent jurisdiction.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

BILL PRYOR  
Attorney General  
By:



CAROL JEAN SMITH  
Chief, Opinions Division