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Honorable Timothy C. Boyce
State Forester
Alabama Forestry Commission
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Open Meetings Law – Volunteer Fire Departments – Forestry Commission – Volunteer Fire Associations

A volunteer fire department certified by the Alabama Forestry Commission is subject to the Open Meetings Act.

A county volunteer fire association is subject to the Open Meetings Act.

A quorum of the governing body or a committee or subcommittee of a certified volunteer fire department or county volunteer fire association at a prearranged gathering required by law; a prearranged gathering at which it can exercise its powers or approve the expenditure of public funds; or a gathering at which it deliberates specific matters expected to come before the body, committee, or subcommittee at a later date, is a meeting subject to the act.

Dear Mr. Boyce:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Forestry Commission.

QUESTIONS

1. Is a volunteer fire department certified by the State Forestry Commission subject to the new Open Meetings Act?

2. Is a county volunteer fire association subject to the act?

FACTS AND ANALYSIS

To remedy Alabama's vague Sunshine Law, the Legislature passed the Open Meetings Act of 2005 ("OMA"), which became effective October 1, 2005, and is codified at section 36-25A-1, *et seq.*, of the Code of Alabama. The OMA applies to "meetings of a governmental body." ALA. CODE § 36-25A-1 (Supp. 2005). The threshold question is whether a certified volunteer fire department and county volunteer fire association are "governmental bod[ies]" under the act. The OMA defines that term as follows:

> (4) GOVERNMENTAL BODY. All boards, bodies and commissions of the executive and legislative departments of the state or its political subdivisions or municipalities which expend or appropriate public funds; all multimember ***governing bodies of*** departments, agencies, institutions, and ***instrumentalities*** of the executive and legislative departments ***of the state*** or its political subdivisions or municipalities, ***including***, without limitation, all corporations and other ***instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state*** or its political subdivisions, counties or municipalities.

ALA. CODE § 36-25A-2(4) (Supp. 2005) (emphasis added).

The Alabama Forestry Commission certifies volunteer fire departments under section 9-3-17 of the Code of Alabama. ALA. CODE § 9-3-17 (2001). Volunteer fire departments perform a governmental function in extinguishing fires. Thus, the Legislature has specifically stated that they are public in nature as they protect the health, safety, and welfare of the public. ALA. CODE § 9-3-18(a) (2001). This Office has recognized that volunteer fire departments are public entities. Opinion to Honorable Stephen A. McMillan, Member, House of

Representatives, dated September 23, 2005, A.G. No. 2005-198. Moreover, this Office understands that most are entirely supported by public funds. Based on these factors, it is the opinion of this Office that a certified volunteer fire department is an instrumentality of the Forestry Commission that is subject to the OMA. This opinion is limited to the facts and circumstances of this request.

Regarding your second question, this Office understands that the boards of county volunteer fire associations are composed of representatives from each volunteer fire department in the county. Because the majority of the board of such an association is appointed or elected by the volunteer fire departments, which as already discussed, are instrumentalities of the state, the association is subject to the OMA.

Although section 36-25A-2(4)(c) does also exempt certain voluntary membership associations from the requirements of the OMA, a county volunteer fire association is not the type that is excluded. This section provides the following qualified exemption: "Voluntary membership associations ***comprised of public employees, counties, municipalities, or their instrumentalities*** which have not been delegated any legislative or executive functions by the Legislature or Governor." ALA. CODE § 36-25A-2(4)(c) (Supp. 2005) (emphasis added). Membership in a county volunteer fire association is only open to volunteer fire departments in the county, not any group of employees or county or municipal governments. Moreover, regarding instrumentalities, the exemption in section 36-25A-2(4)(c) is limited to associations whose members are instrumentalities of counties or municipalities, not instrumentalities of the state such as volunteer fire departments.

Having determined that a certified volunteer fire department and county volunteer fire association are "governmental bodies" under the OMA, the question becomes whether gatherings of those bodies are meetings subject to the act. Not every gathering of a volunteer fire department and fire association is covered. The definition of "meeting" in the OMA is limited to the following three types of gatherings:

> (6) MEETING. a. Subject to the limitations herein, the term meeting shall only apply to the following:
>
> 1. The prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body at a time and place which is set by law or operation of law.

> 2. The prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body during which the body, committee, or subcommittee of the governmental body is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds.
>
> 3. The gathering, whether or not it was prearranged, of a quorum of a governmental body or a quorum of a committee or a subcommittee of a governmental body during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the body, committee, or subcommittee at a later date.

ALA. CODE § 36-25A-2(6) (Supp. 2005).

Moreover, section 36-25A-2(6) further excludes certain gatherings as follows:

> b. The term "meeting" shall not include:
>
> > 1. Occasions when a quorum of a governmental body, committee, or subcommittee attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers so long as the governmental body does not deliberate specifics matters that, at the time of the exchange, the participating members expect to come before the governmental body at a later date.
> >
> > 2. Occasions when a quorum of a governmental body gathers, in person or by electronic communication, with state or federal officials for the purpose of reporting or obtaining information or seeking

> support for issues of importance to the governmental body.

ALA. CODE § 36-25A-2(6) (Supp. 2005).

Applying these definitions, a quorum of the governing body or a committee or subcommittee of a certified volunteer fire department or county volunteer fire association at a prearranged gathering required by law; a prearranged gathering at which it can exercise its powers or approve the expenditure of public funds; or a gathering at which it deliberates specific matters expected to come before the body, committee, or subcommittee at a later date, is a meeting subject to the OMA.

CONCLUSION

A volunteer fire department certified by the Alabama Forestry Commission is subject to the Open Meetings Act.

A county volunteer fire association is subject to the act.

A quorum of the governing body or a committee or subcommittee of a certified volunteer fire department or county volunteer fire association at a prearranged gathering required by law; a prearranged gathering at which it can exercise its powers or approve the expenditure of public funds; or a gathering at which it deliberates specific matters expected to come before the body, committee, or subcommittee at a later date, is a meeting subject to the act.

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

Sincerely,

TROY KING
Attorney General
By:

Brenda F. Smith

BRENDA F. SMITH
Chief, Opinions Division

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