



2009-063

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

April 24, 2009

TROY KING  
ATTORNEY GENERAL

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Honorable Richard Stringer  
Washington County Sheriff  
Post Office Box 307  
Chatom, Alabama 36518

Volunteer Fire Departments -  
Firefighters - Rules of the Road -  
Traffic Offenses - Arrest -  
Emergency Vehicles

Volunteer firemen at the scene of a vehicle accident do not have arrest powers other than those of a private citizen. The chief of a municipally sanctioned volunteer fire department may, under certain limited circumstances as set forth in A.G. Opinion No. 2005-198, issue citations.

A volunteer firefighter's privately owned vehicle is not an authorized emergency vehicle unless designated as such by the chief of police of an incorporated city or the Director of Public Safety. Only authorized emergency vehicles may use red lights visible from the front of such vehicle. No vehicle other than an authorized emergency vehicle may have flashing white lights other than signal lights and emergency flashers authorized by section 32-5-241(d)(3) of the Code of Alabama.

Dear Sheriff Stringer:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Does a volunteer fireman, including the chief, have any arrest powers at any accident scene?

(2) Am I correct to believe that section 32-1-1.1(3) of the Code does not allow volunteer firemen to run flashing red or white (clear) lights on their personal vehicles when moving or stopped on public roads or road rights-of-way?

FACTS AND ANALYSIS

The power of arrest is created by statute. Section 15-10-1 of the Code is the general statute conferring arrest powers on certain public officers. There are other statutes that also confer such powers, such as section 32-2-22 of the Code, conferring such power on state troopers. In addition, a private person may arrest another person under the following circumstances:

(a) A private person may arrest another for any public offense:

(1) Committed in his presence;

(2) Where a felony has been committed, though not in his presence, by the person arrested; or

(3) Where a felony has been committed and he has reasonable cause to believe that the person arrested committed it.

ALA. CODE § 15-10-7 (1995).

Volunteer fire departments are created pursuant to section 9-3-17 of the Code. There is no statutory authority conferring the power of arrest

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upon any members of such departments except for a limited exception as noted by this Office in an opinion issued to Honorable Stephen A. McMillan, Member, House of Representatives, dated September 23, 2005, A.G. No. 2005-198 (copy of opinion attached). In that opinion, this Office stated that the chief of a municipally sanctioned volunteer fire department, as an assistant to the State Fire Marshal, who has complied with APOST standards may, if directed by the Fire Marshal, issue a citation for the violation of a state law related to the matters set forth in section 36-19-2 of the Code.

Your request is whether volunteer firemen have any arrest powers at any accident scene, by which I assume, for the purposes of this opinion, that you mean an accident scene involving vehicles. Generally speaking, volunteer firemen would not have any arrest powers at such an accident scene other than those of a private citizen. The other exception would be the one noted in the above-referenced opinion.

Only authorized emergency vehicles may use red lights visible from the front of the vehicle. ALA. CODE § 32-5-241(d)(2) (1999). That section provides that “[n]o person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This section shall not apply to authorized emergency vehicles.” *Id.* “Authorized emergency vehicles” are defined as “[s]uch fire department vehicles, police vehicles and ambulances as are publicly owned, and such other publicly or privately owned vehicles as are designated by the Director of Public Safety or the chief of police of an incorporated city.” ALA. CODE § 32-1-1.1(3) (1999).

A volunteer firefighter’s privately owned vehicle would not be an authorized emergency vehicle unless so designated by the chief of police of an incorporated city or the Director of Public Safety. Unless so designated, such privately owned vehicles may not use red lights visible from the front of the vehicle.

Any vehicle may be equipped with flashing white lights for the purpose of warning of traffic hazards. ALA. CODE § 32-5-241(d)(3) (1999). That subsection provides as follows:

(3) Any vehicle may be equipped with flashing lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the

exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this section. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber.

The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than 1,500 feet under normal atmospheric conditions at night.

*Id.* The lights referenced in section 32-5-241(d)(3) are what are commonly referred to as emergency flashers. The only other flashing white lights authorized on a vehicle are signal lights. ALA. CODE § 32-5-241(b) (1999).

This Office has stated in a previous opinion issued to Honorable Robert M. Patterson, Acting Director, Department of Public Safety, dated December 9, 1994, A.G. No. 95-00065 that a vehicle may only display lights that are required by section 32-5-240 or that are authorized by section 32-5-241. *Id.* No vehicle other than an authorized emergency vehicle may thus display any flashing white lights other than signal lights or emergency flashers authorized by section 32-5-241(d)(3).

#### CONCLUSION

Volunteer firemen at the scene of a vehicle accident do not have arrest powers other than those of a private citizen. The chief of a municipally sanctioned volunteer fire department may, under certain limited circumstances as set forth in A.G. Opinion No. 2005-198, issue citations.

A volunteer firefighter's privately owned vehicle is not an authorized emergency vehicle unless designated as such by the chief of police of an incorporated city or the Director of Public Safety. Only authorized

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emergency vehicles may use red lights visible from the front of the vehicle. No vehicle other than an authorized emergency vehicle may have flashing white lights other than signal lights and emergency flashers authorized by section 32-5-241(d)(3) of the Code.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Jack Curtis, Legal Division, Department of Public Safety.

Sincerely,

TROY KING  
Attorney General  
By:

  
BRENDA F. SMITH  
Chief, Opinions Division

TK/BS/JMC/ttf

Attachment

790999/131830



2005-198

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

September 23, 2005

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
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Honorable Stephen A. McMillan  
Member, House of Representatives  
Post Office Box 337  
Bay Minette, Alabama 36507

Volunteer Fire Departments - Rescue  
Squads - Motor Vehicles - Fireworks -  
Traffic Offenses - Baldwin County

Rescue squads do not have to be members of the Alabama Association of Rescue Squads ("AARS"). Rescue squads are licensed by the Alabama Department of Public Health. Volunteer rescue squads do not have to be licensed if they are AARS members and comply with AARS standards that are requirements for membership. A volunteer rescue squad may choose to be licensed and not be an AARS member.

The chief of a municipal fire department or municipally sanctioned volunteer fire department, as an assistant to the State Fire Marshal, who has complied with APOST standards may, if directed by the Fire Marshal, issue a citation for the violation of a state law related to the matters set forth in section 36-19-2 of the Code of Alabama.

Dear Representative McMillan:

This opinion of the Attorney General is issued in response to your request.

### QUESTIONS

1. Does section 9-3-18 of the Code of Alabama imply that organized volunteer fire departments and organized rescue squads have the same status as public entities?

2. Do sections 32-6-170 and 32-11-1 of the Code of Alabama require that a rescue squad be a member of the Alabama Association of Rescue Squads? Is AARS authorized to set minimum standards for rescue squads?

3. Do sections 36-19-2 and 36-19-3 of the Code of Alabama confer law enforcement duties on firefighters to write citations for violations of state law regarding interfering with a firefighter executing his or her duty?

4. How do the requirements of section 32-5-74 of the Code of Alabama apply to a semitrailer used for the transport and storage of fireworks/explosives?

### FACTS AND ANALYSIS

The Legislature deems organized volunteer fire departments and organized rescue squads public in nature as they protect the health, safety, and welfare of the public. ALA. CODE § 9-3-18(a) (2001). Thus, you correctly indicate that they are public entities. This Office has stated that a contract between a town and a volunteer fire department incorporated as a nonprofit corporation does not have to be competitively bid because the Competitive Bid Law does not apply to contracts between public entities. Opinion to Honorable Jack Fendley, Mayor, Town of Pennington, dated January 19, 2005, A.G. No. 2005-046. This Office has also addressed this question in the context of the competitive bidding process for sales of state land under the Land Sales Act, codified at section 9-15-70, *et seq.*, of the Code of Alabama. The act excepts a transfer to a local board of education on the condition that a subsequent transfer to a "private person, firm or corporation" must be competitively bid. ALA. CODE § 9-15-82 (2001). This Office concluded that this restriction is not applicable to a subsequent transfer to a volunteer fire department, which, under section 9-3-18(a), is not a private firm or corporation.

Sections 32-6-170, *et seq.*, and 32-11-1, *et seq.*, of the Code of Alabama do not require that all rescue squads must be members of AARS. These provisions merely provide for special license plates for the personal vehicles of members of and for special license plates and tax exemptions for vehicles owned by volunteer rescue squads that belong to AARS.

Rescue squads are governed by section 22-18-1, *et seq.*, of the Code of Alabama, which provides for regulation of ambulances by the Alabama Department of Public Health ("ADPH"). Section 22-18-2 exempts "volunteer rescue squads that are members of the Alabama Association of Rescue Squads, Inc." from the licensure requirements. ALA. CODE § 22-18-2 (1997). Nonetheless, this Office has stated that a volunteer rescue squad may apply for licensure from ADPH and be bound by its requirements. Opinion to Honorable Claude Earl Fox, State Health Officer, dated May 16, 1989, A.G. No. 89-00283. Accordingly, a rescue squad does not have to be an AARS member, but if it is a volunteer rescue squad that is a member and complies with AARS standards, it is not required to be licensed by ADPH. In addition, a volunteer rescue squad may choose to be licensed and not be an AARS member.

Regarding the law enforcement powers of firefighters, you refer to sections 36-19-2 and 36-19-3 of the statutes creating the Fire Marshal's Office [section 36-19-1, *et seq.*, of the Code of Alabama]. Section 36-19-2 provides for the law enforcement powers of the Fire Marshal and his or her duly appointed deputies and assistants. It states as follows:

The Fire Marshal and his duly appointed deputies and assistants shall have the specific duty of enforcing the laws, regulations and ordinances of the state and the provisions of this article throughout the state in matters relating to:

- (1) Prevention of fires;
- (2) Storage, sale and use of combustibles and explosives;
- (3) Installation and maintenance of automatic and other fire alarm systems and fire extinguishing equipment;
- (4) Construction, maintenance and regulation of fire escapes;

(5) The means and adequacy of exits in case of fire from factories, asylums, hospitals, churches, schools, halls, theaters, amphitheatres and all other places in which numbers of persons live, work or congregate from time to time for any purpose or purposes;

(6) Suppression of arson, and the investigation of the cause, origin and circumstance of fires.

ALA. CODE § 36-19-2 (2001). This section gives these officials the power to enforce state laws related to these matters.

This Office has stated that the Fire Marshal and his or her deputies and assistants are peace officers. Opinion to Honorable J. David Stout, Mayor, City of Fort Payne, dated July 9, 1997, A.G. No. 97-00221. That opinion, recognizing that section 36-19-2 limits these officials to the enforcement of state law, concluded that only municipal police officers can issue citations for the violation of municipal ordinances regarding fire suppression. A peace officer is required to comply with APOST standards under section 36-21-46(a) of the Code of Alabama. Opinion to Honorable Thomas M. Smith, District Attorney, Tuscaloosa County, dated September 13, 2004, A.G. No. 2004-218. The Fire Marshal, his or her deputies, and assistants must meet the requirements of APOST before they can exercise their law enforcement powers.

Section 36-19-3 provides for the Fire Marshal's assistants. ALA. CODE § 36-19-3 (2001). They include "the chief of a *municipal fire department*, the chief of police or marshal in every city where a fire department is established, and the mayor, where there is no fire department." *Stout* at 3 (emphasis added). Whether the chief of a volunteer fire department is an assistant depends on how the department is organized. Under section 9-3-17 of the Code of Alabama, volunteer fire departments must be incorporated nonprofit organizations or sanctioned by a legal subdivision. ALA. CODE § 9-3-17(a)(1) (2001). Departments that are sanctioned become part of the particular governmental subdivision. Opinion to Honorable Roger D. Bedford, Jr., Member, Alabama State Senate, dated January 5, 2001, A.G. No. 2001-059. The chief is an assistant to the Fire Marshal if the department is sanctioned by the municipality.

Section 36-19-3 further restricts the authority of the Fire Marshal's assistants, providing that they are "*subject to the direction of the Fire Marshal* in the execution of the provisions of this article." ALA. CODE § 36-19-3 (2001) (emphasis added). Therefore, the *Stout* opinion also cautioned that the Fire Marshal's assistants may exercise their law enforcement powers "at the direction of the State Fire Marshal." *Id.* at 3.

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Regarding the requirements for vehicles transporting explosives set forth in section 32-5-74 of the Code of Alabama, to the extent that the Fire Marshal's assistants have the power to enforce this section, they could do so only at the Fire Marshal's direction. *Id.* This Office understands that the Fire Marshal currently does not authorize his assistants to enforce this section. Therefore, your last question regarding application of section 32-5-74 is moot.

#### CONCLUSION

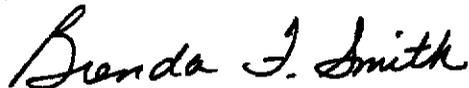
Rescue squads do not have to be members of the Alabama Association of Rescue Squads. Rescue squads are licensed by the Alabama Department of Public Health. Volunteer rescue squads do not have to be licensed if they are AARS members and comply with AARS standards that are requirements for membership. A volunteer rescue squad may choose to be licensed and not be an AARS member.

The chief of a municipal fire department or municipally sanctioned volunteer fire department, as an assistant to the State Fire Marshal, who has complied with APOST standards may, if directed by the Fire Marshal, issue a citation for the violation of a state law related to the matters set forth in section 36-19-2 of the Code of Alabama.

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

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB  
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