



2009-075

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

June 10, 2009

TROY KING
ATTORNEY GENERAL

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Honorable George Roy
Mayor, City of Calera
10947 Highway 25
Calera, Alabama 35040

Fire Code – Police Jurisdiction – Fire
Chiefs – Law Enforcement – Shelby
County

Municipal ordinances relating to fire protection, such as building codes and burn permits, may be enforced within the police jurisdiction of the municipality. Only municipal police officers have the authority to issue citations for violations of these municipal ordinances. 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 Mayor Roy:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Calera.

QUESTION

May city fire department personnel exercise law enforcement powers in the police jurisdiction? If so, which fire department personnel have these law enforcement powers, and do these enforcement powers include city ordinances (such as building codes, burn permits, etc.) in addition to state statutes?

FACTS AND ANALYSIS

Your request states that the City of Calera provides fire and police protection and other municipal services in its police jurisdiction, and a question has arisen as to the authority of the city's fire department personnel to enforce city ordinances and state laws within the police jurisdiction.

Section 11-40-10 of the Code of Alabama establishes the police jurisdiction and specifically provides that ordinances enforcing police or sanitary regulations are enforceable within the police jurisdiction. Subsection (b) of section 11-40-10 states as follows:

Ordinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations thereof shall have force and effect in the limits of the city or town and in the police jurisdiction thereof and on any property or rights-of-way belonging to the city or town.

ALA. CODE § 11-40-10(b) (2008).

The police powers of a city "extend to all appropriate ordinances for the protection of the peace, safety, health, and good morals of the people affected thereby." *City of Homewood v. Wofford Oil Co.*, 232 Ala. 634, 169 So. 288, 290 (1936). Although the city may not exercise every police power in its police jurisdiction, the peace, safety, and health of the residents of the jurisdiction do enter into the extension of police jurisdiction. *Id.* "Ordinances for the common protection of the inhabitants of the entire area, inside and outside the corporate limits, in their safety, peace, health, etc., are within this governing power." *Id.*

This Office has previously concluded that a municipality has full authority to issue building permits, perform inspections, and enforce its building codes within its police jurisdiction. Opinion to Thomas B. Norton, Mayor, Town of Gulf Shores, dated March 22, 1982, A.G. No. 82-00252. Building permits fall under a city's general police powers, which the city may enforce in its police jurisdiction. *City of Robertsedale v. Baldwin County*, 538 So. 2d 33 (Ala. Civ. App. 1988). Based on the foregoing, a municipality has the authority to enforce its ordinances regarding fire protection, such as building codes and burn permits, within the police jurisdiction.

The second part of your question relates to who has the authority to issue citations for violations of municipal ordinances and state law within the police jurisdiction. This Office has previously concluded that the authority to issue

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citations for violations of municipal ordinances rests solely with municipal police officers. Opinion to Honorable J. David Stout, Mayor, City of Fort Payne, dated July 9, 1997, A.G. No. 97-00221. In a more recent opinion, this Office reaffirmed that conclusion and stated that 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. Opinion to Honorable Stephen A. McMillan, Member, House of Representatives, dated September 23, 2005, A.G. No. 2005-198. A copy of this opinion is enclosed for your review.

CONCLUSION

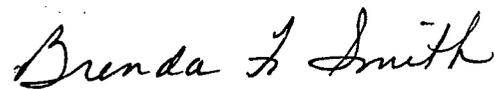
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I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

TK/BFS

Enclosure: As stated

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2005-198

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

September 23, 2005

TROY KING
ATTORNEY GENERAL

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.

Honorable Stephen A. McMillan
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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

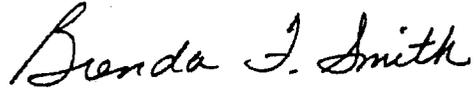
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/GWB
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