



# 2010-027

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

500 DEXTER AVENUE  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

December 31, 2009

Honorable Chad A. Fincher  
Member, House of Representatives  
Post Office Box 981  
Semmes, Alabama 36575

Fire Districts – Municipalities – Fire  
Protection – Police Jurisdiction –  
Emergency Medical Services –  
Mobile County

Because fire districts may be created as firefighting districts or firefighting and medical services districts, the types of calls to which the Turnerville Volunteer Fire Department must respond depends on the type of district created in its bylaws.

The Turnerville Volunteer Fire Department is responsible for responding to all fire calls within its district.

Questions involving possible municipal liability are fact-intensive questions. This Office does not make determination of fact, and such questions should be posed to a court of competent jurisdiction.

Dear Representative Fincher:

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

QUESTION 1

Based on any existing law, what type of calls are considered fire calls? Are fire calls only calls to actual fires that a volunteer fire department responds to or could the definition of fire calls encompass all calls that a volunteer fire department responds to including fire-rescue and medical emergency calls?

FACTS AND ANALYSIS

Section 14 of the Mobile Local Amendments to the Recompiled Constitution of Alabama authorizes the Mobile County Commission to establish and maintain firefighting districts within Mobile County. Legislation more specific to this constitutional amendment is found in Act 90-697, which provides for the creation, maintenance, and regulation of fire districts within Mobile County. The Turnerville Fire District is created pursuant to Act 90-697. Subsequent to the passage of Act 90-697, Act 98-619, an act specific to the Turnerville Fire Department, was passed. It is the opinion of this Office that these acts together govern with regard to the Turnerville Fire District.

Your initial inquiry questions the meaning associated with the term "fire call." This Office was unable to find a specific reference to the term "fire call" in the Code of Alabama. Based on the other questions you pose, you are seeking clarification regarding what types of calls demand a response by the Turnerville Volunteer Fire Department. Section 14 of the Mobile Local Amendments to the Recompiled Constitution of Alabama specifically states that "the [Mobile County] [C]ommission is further authorized to enter into agreements with volunteer fire departments within the county for *fire protection and services.*" ALA. CONST. LOCAL AMENDS., Mobile County § 14 (amend. 532) (emphasis added). Section 2 of Act 90-697 establishes the creation of two types of districts, a "district for fighting fires" and a "district for fire fighting and emergency medical services." 1990 Ala. Acts No. 90-697, 1352, 1353. This Office did not receive specific information stating the type of district- firefighting or firefighting and emergency medical services- that was established in the bylaws of the Turnerville Volunteer Fire Department. The Turnerville

Honorable Chad A. Fincher  
Page 3

Volunteer Fire Department is required to respond to all calls commensurate with the type of district established.

### CONCLUSION

Because fire districts may be created as firefighting districts or firefighting and medical services districts, the types of calls to which the Turnerville Volunteer Fire Department must respond depends on the type of district created in its bylaws.

### QUESTIONS 2 AND 3

Is the Turnerville Volunteer Fire Department responsible for all fire calls in the police jurisdiction of the City of Saraland that overlaps with the Turnerville Fire District according to Act 98-619?

Is the Turnerville Volunteer Fire Department considered first responders for all fire calls in the police jurisdiction of the City of Saraland that overlaps the Turnerville Fire District according to Act 98-619?

### FACTS AND ANALYSIS

Your questions contemplate the appropriate protocol with respect to fire calls in the Saraland police jurisdiction when there is an overlap in coverage provided by the City of Saraland and the Turnerville Fire District. Your question is two-fold in that you seek guidance regarding whether the Turnerville Fire District is responsible for responding to such calls, as well as whether the Turnerville Fire District ("Fire District") should be notified first so as to enable the Fire District to respond quicker.

The police jurisdiction of a municipality is not considered an area lying within the municipality. The area lying within a municipality is generally referred to as the corporate limits of a municipality. Opinion to

Honorable Chad A. Fincher

Page 4

Honorable Wallace E. Thompson, Mayor, Town of Sylvan Springs, dated May 6, 1994, A.G. No. 94-00179. Historically, this Office has concluded that if no tax revenue is collected in the police jurisdiction, the municipality has no duty to provide services of any kind in the police jurisdiction. Opinion to Dave Thomas, Member, House of Representatives, dated October 22, 1998, A.G. No. 99-00019.

The issue you raise regarding overlapping authority and/or jurisdiction with regard to fire districts and municipal police jurisdictions has been addressed in several opinions. More specifically, in an opinion to Honorable Hoyt Lolley, Mayor, City of Saraland, dated November 3, 1995, A.G. No. 96-00033, this Office was asked whether the City of Saraland or the Turnerville Fire District was responsible for fire calls in the police jurisdiction of the City of Saraland. In response, this Office stated that “[s]ince the area which overlaps the Saraland police jurisdiction is a part of the Turnerville Fire District, it must be served by the Fire District unless an election is held pursuant to the provisions of the Act to abolish that portion of the district.” *Lolley* at 2.

In instances where there is an overlap in jurisdiction, this Office has also instructed fire districts and municipalities to cooperate and coordinate their efforts to provide the most effective service to the public. *Thompson* at 2 and opinion to Honorable W. Cameron Parsons, Attorney, Carroll’s Creek Fire District, dated April 21, 1997, A.G. No. 97-00164.

Since the issuance of *Lolley*, the Legislature passed Act 98-619, which your questions reference. As stated earlier, Act 98-619 is specific to the Turnerville Fire District. This act sets forth the appropriate steps to be taken in instances where a municipality seeks to expand into the Turnerville Fire Protection District. Specifically, section 2 of this act states as follows:

A municipal police jurisdiction shall not expand into the Turnerville fire protection district unless the expansion into the affected area is approved by unanimous consent of all the owners of property located and contained within the affected area, pursuant to Section 3, or approved by a majority of the votes cast at an election by the qualified electors residing in the

Honorable Chad A. Fincher

Page 5

affected area of the Turnerville fire protection district, pursuant to Section 4.

1998 Ala. Acts No. 98-619, 1364, 1364.

This act did not repeal the earlier legislation set out in Act 90-697. Section 15 of Act 90-697 states that “no [fire] district shall be abolished or diminished when it has any indebtedness.” 1990 Ala. Acts No. 90-697, 1352, 1358. Reading these laws *in para materia*, it is the opinion of this Office that no portion of the Turnerville Fire District may be diminished until such time as the fire district has eliminated its indebtedness. Thus, the Turnerville Fire District is required to respond to all fire calls within its district until such time that any portion of the district is diminished pursuant to Acts 90-697 and 98-619. Opinion to Honorable Daine Sharpe, Attorney for City of Dadeville, dated May 7, 1999, A.G. No. 99-00200.

#### CONCLUSION

The Turnerville Volunteer Fire Department is responsible for responding to all fire calls within its district.

#### QUESTION 4

Does the City of Saraland face any liability issues by not responding to fire calls in the area of their police jurisdiction that overlaps with Turnerville Fire District?

#### FACTS AND ANALYSIS

This Office has previously concluded that, if no tax revenue is collected in the police jurisdiction, the municipality has no duty to provide services of any kind in the police jurisdiction. Opinion to A. Victor Guarisco, Mayor, City of Daphne, dated April 30, 1987, A.G. No. 87-00160; opinion to Honorable Robert M. Field, District Attorney of Calhoun County, dated June 30, 1981, A.G. 81-00442; *Prattville v. Joyner II*, 698 So. 2d 122 (Ala. 1997). Questions of municipal liability cannot be fully resolved by an opinion of this Office because such matters

Honorable Chad A. Fincher

Page 6

depend upon many factors, including whether the city was collecting taxes in the jurisdiction, whether the city had been providing services in the area, and perhaps whether the residents were already receiving services from another entity. *See, Joyner II.* As such, questions of liability are more properly posed to a court of competent jurisdiction.

### CONCLUSION

Questions involving possible municipal liability are fact-intensive questions. This Office does not make determination of fact, and such questions should be posed to a court of competent jurisdiction.

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

Sincerely,

TROY KING  
Attorney General

By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/MMG  
897575/138279