



2011-061

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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May 16, 2011

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Honorable Roy R. Powell
Safety Officer/Co-Chairman
Board of Directors
Mt. Olive Fire Protection District
13322 Mount Olive Road
Coker, Alabama 35452

Fire Districts – Fire Protection – Law
Enforcement Officers – Traffic Control –
Volunteer Fire Departments – Tuscaloosa
County

The Mt. Olive Fire Protection District
("District") is not required to direct traffic
during motor vehicle incidents. Whether the
District should do so, and who should provide
training, are policy determinations to be
made by the District.

The District may not perform routine traffic
control in nonemergency circumstances.

Volunteer firefighters may be granted limited
immunity under section 6-5-335 of the Code
of Alabama when acting gratuitously and in
good faith.

The sheriff, Alabama Department of Public
Safety, constables, and the District should
cooperate to ensure adequate, timely traffic
control at an incident.

Dear Mr. Powell:

This opinion of the Attorney General is issued in response to your request
on behalf of the Mt. Olive Fire Protection District.

QUESTIONS

1. What is the responsibility of the Mt. Olive Fire Protection District to perform traffic control during motor vehicle incidents?
2. May I provide traffic control training?
3. What is the District's liability in performing traffic control?
4. May the District clear the roadway of vehicles involved in an incident?
5. How does the District obtain additional help from law enforcement to direct traffic in a timely manner?

FACTS AND ANALYSIS

Your request states that the Mt. Olive Fire Protection District is a volunteer fire department that responds to many motor vehicle incidents on a busy state road in the district. You further state that the District has encountered difficulty with the sheriff's deputies or state troopers either arriving at the scene hours later or not at all. There are times when the District is ready to leave, either because it has completed its response or has received another call, before law enforcement has arrived. There are times when the District is ready to leave and only one law enforcement officer is present and directing traffic, which is unsafe. The District is reluctant to abandon the incident without providing adequate traffic control, but leaving personnel at the scene jeopardizes its ability to respond to other incidents. The longer the District stays, more of its volunteers leave to return to work, endangering the public and the firefighters. In addition, the District was recently dispatched specifically for traffic control for a broken down vehicle, which was not an emergency.

Your request also states that the District is incorporated as a public corporation pursuant to Act 86-656 of the 1986 First Special Session of the Alabama Legislature. 1986 Ala. Acts No. 86-656, 39. The act was amended and reenacted by Act 97-665 of the 1997 Regular Session of the Alabama Legislature. 1997 Ala. Acts No. 97-665, 1278.

A public corporation is not authorized by statute or common law to exceed its corporate power. *Ala. Hosp. Ass'n v. Dillard*, 388 So. 2d 903, 905 (Ala. 1980). The preamble to Act 97-665 states that the act was passed to "establish[] a fire district . . . for the purpose of *preventing fires or for fire protection*." 1997 Ala. Acts No. 97-665, 1278 (emphasis added). This language is echoed in the provisions of the act. Section 3 of Act 86-656, as amended, provides that "[a]ny area situated entirely within the county may be established as a district for *fighting fires* pursuant to this act." *Id.* at 1279 (emphasis added). Section 2, as amended, defines "district for fighting fires" as "a district created under this act for establishing and maintaining a system for *fighting or preventing fires*." *Id.* (emphasis added). Section 11, as amended, lists the corporate powers of a district established under the act. *Id.* at 1281-82. These powers relate to the business of operating a system, such as charging fees and contracting. *Id.* The section also grants a district the power "to do any and all acts or things necessary and convenient for carrying out the purposes for which it is created." *Id.* at 1281.

Research does not reveal any statute requiring firefighters to direct traffic on the roadways or mandating how traffic control is to be conducted. Therefore, the District is not required to perform traffic control during motor vehicle incidents. The District is granted the power "to do any and all acts or things necessary and convenient for carrying out the purposes for which it is created." *Id.* Providing traffic control while responding to emergency motor vehicle incidents to fight fires and prevent fires may be necessary and convenient for carrying out the duties of the District. Removing crashed vehicles and debris from the roadway may also be necessary and convenient for carrying out the duties of the District. Whether the District should provide traffic control while responding to motor vehicle incidents, and who should provide training, are policy determinations to be made by the District.

The District may contact the Alabama Firefighters' Personnel Standards and Education Commission/Alabama State Fire College-Shelton State Community College ("Commission") in Tuscaloosa about the Commission's developing and providing a traffic control training class for firefighters. The Commission conducts training for firefighters statewide, including volunteer firefighters. Opinion to Honorable Allan Rice, Executive Director, Alabama Firefighters' Personnel Standards and Education Commission/Alabama State Fire College-Shelton State Community College, dated December 7, 2010, A.G. No. 2011-019; ALA. CODE § 36-32-7(2) (Supp. 2010).

You specifically ask about responding to nonemergency calls to perform traffic control to clear the roadway of a broken-down car. The District has no specific duty to respond to nonemergency, routine traffic control problems and

performing routine, nonemergency traffic control is not within the corporate powers of the District.

If the District undertakes to control traffic while responding to emergency motor vehicle incidents, it has an obligation to do so reasonably. *Bethea v. Escambia County*, 514 So. 2d 872 (Ala. 1987) (deputies not liable for injuries received by motorists in accident near disabled car around which deputies were attempting to direct traffic). This Office has opined, as follows, regarding the liability of a volunteer fire department:

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.

....

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.

Opinion to Honorable Kenneth Hammond, Mayor, Town of Valley Head, dated April 12, 2001, A.G. No. 2001-151, at 2-3.

This Office understands that many constables routinely assist law enforcement with directing traffic. This Office further understands that in Mobile County in particular, constables, working alone or with police officers or deputies, provide much of the needed traffic control in the county and the municipalities of the county, including motor vehicle incidents. The sheriff, Alabama Department of Public Safety, constables, and the District should cooperate to ensure adequate, timely traffic control at an incident. Such cooperation is essential for the District to fulfill its purpose and for the protection of the motoring public and the persons directing traffic.

CONCLUSION

The Mt. Olive Fire Protection District is not required to direct traffic during motor vehicle incidents. Whether the District should do so, and who should provide training, are policy determinations to be made by the District.

The District may not perform routine traffic control in nonemergency circumstances.

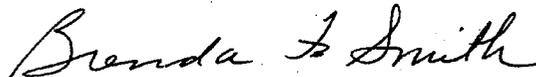
Volunteer firefighters may be granted limited immunity under section 6-5-335 of the Code of Alabama when acting gratuitously and in good faith.

The sheriff, Alabama Department of Public Safety, constables, and the District should cooperate to ensure adequate, timely traffic control at an incident.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

LS/GWB

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