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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Municipalities – Fire Chiefs – Fire Code
– Fire Marshal – Mobile County

The fire chief of the City of Bayou La Batre is authorized to inspect and test fire hydrants to ensure proper serviceability and operation, provided that he or she does so subject to the direction of the State Fire Marshal.

The Utilities Board of the City of Bayou La Batre and the City of Bayou La Batre should cooperate with each other to provide the most effective fire protection for a reasonable cost for its residents.

Absent an agreement to the contrary, the Utilities Board for the City of Bayou La Batre, as the owner of its fire hydrants, is responsible for paying for the repairs and maintenance of its fire hydrants.

Absent an agreement to the contrary, the City of Bayou La Batre, as the consumer

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of the water used in testing fire hydrants, is responsible for the cost of the water used during testing.

Dear Gentlemen:

This opinion of the Attorney General is issued in response to your requests on behalf of the City of Bayou La Batre and the Utilities Board of the City of Bayou La Batre.

QUESTIONS

(1) Is the fire chief of the City of Bayou La Batre ("Chief") authorized to inspect and test fire hydrants to ensure proper serviceability and operation?

(2) Who is responsible for the cost of the water used during the testing of the hydrants?

(3) Who is responsible for repairing and maintaining the fire hydrants?

FACTS AND ANALYSIS

As set forth in your request, the Chief has discovered fire hydrants within the city that, upon flushing, produce water containing oyster shells, gravel, and other foreign objects. These items, if drawn into the pumping apparatus of a fire truck, would cause extensive damage to the pumps and equipment used by the fire department.

The Utilities Board of the City of Bayou La Batre ("Board") provides the water system for the City of Bayou La Batre. In discussing this issue with the Board, a question has arisen as to whether the Chief has the authority to inspect and test the fire hydrants. The fire hydrants are owned by the Board, but are utilized by the fire department to provide fire protection services to residents and businesses within the City of Bayou La Batre.

Section 36-19-3 of the Code of Alabama states as follows:

The chief of the fire department, the chief of police or marshal of every incorporated city or town in which a fire department is established, the mayor of each incorporated town in which no fire department exists and the sheriffs of the several counties of the state shall be, by virtue of such offices so held by them, assistants to the Fire Marshal, subject to the duties and obligations imposed by this article and subject to the direction of the Fire Marshal in the execution of the provisions of this article.

ALA. CODE § 36-19-3 (2013) (emphasis added).

This Office has often cautioned that local officials acting as assistant fire marshals, under the authority of section 36-19-3 of the Code, act subject to the direction of the State Fire Marshal. Opinion to Honorable Stephen A. McMillan, Member, House of Representatives, dated September 23, 2005, A.G. No. 2005-198 at 4; opinion to Honorable J. David Stout, Mayor, City of Fort Payne, dated July 9, 1997, A.G. No. 97-00221 at 3; opinion to Honorable Larry Staton, Sheriff, Blount County, dated September 4, 1991, A.G. No. 91-00389 at 2-3.

Section 36-19-2 of the Code sets forth the general authority of the State Fire Marshal and assistants thereof. ALA. CODE § 36-19-2 (2013). Specifically, that authority includes the “duty of enforcing the laws, regulations and ordinances of the state and the provisions of this article throughout the state in matters relating to . . . [i]nstallation and maintenance . . . and other fire alarm systems and fire extinguishing equipment.” *Id.* This Office has recognized that fire hydrants are equipment useful for fire protection services. Opinion to Honorable Jeff Wyatt, Fire Chief, McAdory Area Fire District, dated September 27, 2012, A.G. No. 2012-092 at 3.

Moreover, section 507.5.2 of the International Fire Code of 2009, duly adopted by the State Fire Marshal, states as follows:

Fire hydrant systems shall be subject to periodic tests as required by the fire code official. Fire hydrant systems shall be maintained in an operative condition at all times and shall be repaired

where defective. Additions, repairs, alterations and servicing shall comply with approved standards.

Section 507.5.2, International Fire Code (2009); see ALA. ADMIN. CODE r. 482-2-101-.02 (2010) (adopting International Fire Code); *see also*, ALA. CODE § 36-19-9 (2013) (Fire Marshal may promulgate regulations for fire prevention and protection) & *Standard Oil Co. v. City of Gadsden*, 263 F. Supp. 502, 508 (N.D. Ala. 1967) (regulations of the State Fire Marshal are to be given effect of law). Accordingly, a local fire chief is authorized to inspect and test fire hydrants to ensure proper serviceability and operation provided that he or she does so subject to the direction of the State Fire Marshal.

This authority, however, should be exercised in a reasonable manner. As this Office recognized in the *Wyatt* opinion, utilities boards are often the sole source of water for cities, and fire departments are dependent upon utilities boards for water to fight fires. *Wyatt* at 3. This Office has stated that water authorities and fire districts could enter into a written agreement for a fire district to purchase water and use fire hydrants and, in exchange, the fire district would pay the water authority for the water usage and installation and maintenance of fire hydrants. *Wyatt* at 4.

There is a long history of contracts between municipalities and water boards, as well as case law dealing with the interpretation of same. *See City of Mobile v. Mobile Cnty.*, 169 Ala. 539, 53 So. 793 (1910) (absent an agreement to the contrary, county held responsible for city water used to supply courthouse and jail); *see also*, *City Council of Montgomery v. Montgomery Water-Works*, 79 Ala. 233 (Ala. 1885) (city held responsible for payment of cost of water used for sanitary purposes and for extinguishing fires). “[I]t is both reasonable and just that the services and property thus enjoyed should be paid for . . .” *City Council of Montgomery*, 79 Ala. at 244.

As in *Wyatt*, the Board has an interest in maintaining the integrity of its water and pressure so that it may fulfill its duty to provide potable water to the public. The Chief has an interest in securing and maintaining functional fire hydrants. Both should cooperate with each other to ensure that these duties, including the overriding duty to serve the public, are accomplished. Moreover, the Board and the Chief “should cooperate to enable the [Chief] to provide the most effective fire protection for a reasonable cost for its residents.” *Wyatt* at 1.

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In the absence of such cooperation or an agreement to the contrary, the Board, as the owner of the hydrants, is responsible for the cost of repairing and maintaining its fire hydrants. The City of Bayou La Batre, as the consumer of the water used in testing the hydrants, is responsible for the cost of the water.

CONCLUSION

The fire chief of the City of Bayou La Batre is authorized to inspect and test fire hydrants to ensure proper serviceability and operation, provided that he or she does so subject to the direction of the State Fire Marshal.

The Utilities Board for the City of Bayou La Batre and the City of Bayou La Batre should cooperate with each other to provide the most effective fire protection for a reasonable cost for its residents.

Absent an agreement to the contrary, the Utilities Board for the City of Bayou La Batre, as the owner of its fire hydrants, is responsible for paying for the repairs and maintenance of its fire hydrants.

Absent an agreement to the contrary, the City of Bayou La Batre, as the consumer of the water used in testing fire hydrants, is responsible for the cost of the water used during testing.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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