

# OFFICE OF THE ATTORNEY GENERAL



**99-00019**

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ATTORNEY GENERAL  
STATE OF ALABAMA

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Honorable Dave Thomas  
Member, House of Representatives  
49 Forman Street  
Springville, AL 35146

Fire Departments – Volunteers –  
Municipalities – Police Jurisdictions

Under facts presented, if no tax revenue is received, neither city nor volunteer fire department has an obligation to provide fire protection in the police jurisdiction, absent a contract.

Firemen traveling to assist in emergencies outside the municipality have protection against liability as provided by statute.

The home-rule powers of St. Clair County in Act No. 87-263 do not extend to creating countywide fire districts, or assessing fees for improvements and services.

Dear Representative Thomas:

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

### QUESTION 1

Does a municipal fire department or a volunteer fire department within the corporate limits of a municipality, receiving municipal funding, have a legal obligation to continue providing fire protection to unincorporated areas historically provided coverage from said fire department?

### FACTS AND ANALYSIS

You have informed this Office that the unincorporated areas are police jurisdictions. 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 Victor Guarisco, Mayor, City of Daphne, under date of April 30, 1987, A.G. No. 87-00160; Opinion to Honorable Robert M. Field, District Attorney of Calhoun County, under date of June 30, 1981, A.G. No. 81-00442. In Prattville v. Joyner II, 698 So. 2d 122 (Ala. 1997), this principle was affirmed by the Supreme Court of Alabama. Id. at 125.

Unless tax revenues are being received by the municipality from the police jurisdiction, the municipality is not obligated to continue to provide fire protection or any other service unless bound to do so by contract. A volunteer fire department's obligations are determined by its charter, or its bylaws, although it may agree to provide services under a contract. If any services to residents are to be terminated, advance notice should be provided.

### CONCLUSION

If no tax revenues are received from the police jurisdiction, absent a contract, a municipal fire department has no legal obligation to continue to provide fire protection or any other service. The obligations of a volunteer fire department are determined by its charter, bylaws, or contracts.

QUESTION 2

What effect would documentation from a previous administration, asserting that coverage would be provided, have on the issue, provided no current documentation can be found to the contrary or changing the commitment made by the previous administration?

FACTS, ANALYSIS, AND CONCLUSION

In an Opinion to Honorable Eddie Staff, Jr., Mayor Pro Tem of Atmore, under date of December 17, 1985, A.G. No. 86-00094, this Office concluded that a city government may not abrogate the power of subsequent governments to change the law with regard to subjects within its jurisdiction. Documentation from a previous administration would not prevent the current governing body from changing the manner in which services are provided in the police jurisdiction.

If, however, a previous administration entered into a contract to provide services in the police jurisdiction, the answer to this question will depend on the terms of the contract.

QUESTION 3

Does a mutual aid agreement between departments remove the liability of a fire department that has answered a call outside their jurisdiction?

FACTS AND ANALYSIS

The Code does not refer to mutual aid agreements, but section 11-43-141 of the Code of Alabama provides that in the event of an emergency resulting from fire, the firemen of the city or town and necessary equipment may be sent anywhere in the state. The rest of that section states:

In such event the acts performed for such purpose by such firemen and the expenditures made for such purpose by such city or town shall be deemed conclusively to be for a public and

governmental purpose and all of the immunities from liability enjoyed by a city or town when acting through its firemen for a public or governmental purpose within its corporate limits and police jurisdiction shall be enjoyed by it to the same extent when such city or town is so acting under this section or under other lawful authority beyond its corporate limits and police jurisdiction.

The firemen of any city or town when acting under this section or under other lawful authority beyond the corporate limits and police jurisdiction of such city or town shall have all of the immunities from liability and exemptions from laws, ordinances and regulations and shall have all of the pension, relief, disability, workmen's compensation and other benefits, enjoyed by them while performing their respective duties within the corporate limits and police jurisdiction of such city or town.

ALA. CODE § 11-43-141 (1989).

#### CONCLUSION

When sending firemen and equipment to assist in an emergency resulting from fire under section 11-43-141, both municipalities and firemen have all the immunities from liability that would apply if the fire occurred within the municipality.

#### QUESTIONS 4 AND 5

Does the limited home-rule granted to the St. Clair County Commission provide the commission the authority to establish fire districts countywide?

Does the limited home-rule granted to the St. Clair County Commission provide the commission the authority to assess fees for improvements and/or services?

### FACTS AND ANALYSIS

The only home-rule power granted to St. Clair County appears in Act No. 87-263:

Subject to any limitation of the Constitution of Alabama or of any general law of this state, the St. Clair County Commission or other like governing body shall have the power to levy and collect additional privilege license taxes, excise taxes, ad valorem taxes, and sales and use taxes. The revenue from any of the taxes authorized above shall be deposited into the county treasury to be used in the manner prescribed by the county commission.

1987 Ala. Acts No. 87-263, 369-70. This Act appears to authorize levies of additional privilege license taxes, excise taxes, ad valorem taxes, and sales and use taxes. Establishing fire districts countywide and assessing fees for improvements and/or services other than as specifically set out in Act No. 87-263 are not authorized.

Fire districts may be established as public corporations under section 11-89-1, *et seq.*, when a municipal or county governing body approves an application. ALA. CODE § 11-89-3 and 4 (1994). Fire districts may also be established by local constitutional amendment and local law.

### CONCLUSION

The limited home-rule in St. Clair County does not empower the county commission to establish countywide fire districts or to assess fees for improvements and/or services.

Honorable Dave Thomas  
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR  
Attorney General

By:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive style with a large initial 'C'.

CAROL JEAN SMITH  
Chief, Opinions Division

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