

## The State of South Carolina



## Office of the Attorney General

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November 15, 1991

Paul R. Lunsford, Director  
Military Department  
Office of the Adjutant General  
Emergency Preparedness Division  
Rutledge Building, 1429 Senate Street  
Columbia, South Carolina 29201

Dear Mr. Lunsford:

In a letter to this Office you requested an opinion regarding the Emergency Powers Act. Such act has been codified as Sections 6-11-1410 et seq. of the Code.

Enclosed is a copy of a prior opinion of this Office dated April 5, 1984 which is responsive to several of the questions raised by you. As referenced in that opinion nothing should be interpreted as commenting on any particular factual situation.

In your first question you asked whether the Emergency Powers Act is automatically invoked each time the fire department is called to the scene of an accident or a potential accident. As to such question I would refer you to the response set forth in the 1984 opinion regarding what constitutes an "emergency." Citing Sections 6-11-1420 and 6-11-1430 the opinion commented

Construing these sections together, apparently the Legislature contemplated that a Fire Authority ... (as defined in Sections 6-11-1410) ... would have authority in instances involving the protection of life or property or both, but did not choose to limit the scope of emergency to fire or the other specified situations since the undefined phrase

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"other hazardous conditions or situations" is included. It would probably be impossible to comprehensively list the situations to which a Fire Authority might respond.

As to whether an automobile accident where there is no fire or immediate danger of fire would constitute an "emergency," the opinion commented that since "transportation incidents" are included in Section 6-11-1430, an automobile accident could be considered within the scope of "other hazardous conditions or situations" as referenced in Section 6-11-1420. The opinion commented

... the Act does not expressly distinguish between situations involving fire or an immediate threat of fire and those in which fire is not a factor, though the threat of fire may impliedly be present ....

The opinion concluded that the Emergency Powers Act was applicable to a "broad range" of situations. Legislative clarification was suggested to particularly address the scope of incidents to which the Act was intended to be applicable.

You next asked whether the referenced Act automatically makes the fire chief in charge of a scene even though other public safety officials may be present and whether a fire chief would have authority over such other emergency services. You particularly questioned the authority of a fire chief over a EMS director at a scene. Referencing Section 6-11-1450 which provides a criminal offense for "any person" who obstructs the operations of a fire authority, the 1984 opinion commented in regard to the question of whether a law enforcement officer would be included as a "person" for purposes of violating such provision

It would be inappropriate for us to comment on applicability of the section to a law enforcement officer who may be present at an accident scene in his official capacity, leaving such factual interpretation or application to the courts of this State. It should be noted that, depending on the nature of the emergency and the locality, there may be a number of officials who would have jurisdiction for varying reasons;

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the Act does not appear to address the manner in which various officials should cooperate when such jurisdictions overlap.

You also stated that pursuant to Act No. 1118 of 1974, codified as Sections 44-61-10 et seq. of the Code, EMS is charged with the responsibility of providing rescue extrication equipment on their ambulances or they must insure that a rescue truck responds in entrapment situations. You questioned whether in circumstances where a rescue squad responds on behalf of EMS, can a fire chief deny admittance by the rescue squad to a scene if the fire department has equal rescue capability and claims authority pursuant to the Emergency Powers Act.

Again, as stated in the portion of the opinion referenced above, depending on the circumstances, there may be a number of officials who would have jurisdiction at a particular scene depending on the circumstances and the Emergency Powers Act does not specifically detail the manner in which officials should cooperate in instances of overlapping authority. As stated in that opinion, legislative clarification would be advantageous in clarifying questions such as these regarding conflicting authority.

I regret that this Office cannot be more specific in response to your questions. However depending on the facts and the officials involved, varying conclusions may be applicable. Again, legislative clarification would be useful in resolving the issues raised by your letter.

With kind regards, I am

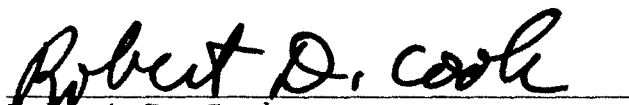
Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an  
Enclosure

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