

1982 WL 189377 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 22, 1982

***1 Re: Opinion Request**

The Honorable Ryan C. Shealy
Gressette Senate Office Building
Post Office Box 142
Suite 513
Columbia, South Carolina 29202

Dear Senator Shealy:

You have asked for an opinion concerning the Occupational Health and Safety Act. Specifically, you have inquired as follows:

1. If a particular volunteer fire department falls under the OSHA regulations, what personal liability exists for the Fire Chief or other officials whose instructions to wear mandated protective clothing are ignored by firefighters?
2. Would the official's knowledge or lack of knowledge of the violations have any legal significance?

As you know OSHA is an intricate system of State and Federal Statutes and Regulations designed to 'assure so far as possible every working man and woman in the nation safe and healthful working conditions . . .'. [29 U.S.C. 651](#). Congress has not completely preempted this field, but State and Federal efforts are loosely tied together by Federal Law. [29 U.S.C. 667](#). Because of the concept of Federalism the Federal Statutes and Regulations would not apply to local political subdivisions and would not govern the most commonly encountered county or community volunteer fire departments. However, the State regulations promulgated pursuant to [§ 41-15-10, et. seq., South Carolina Code \(1976\)](#) are, for reasons of practicality, virtually identical to the Federal Regulations and would control. [29 CFR 1910.156](#) (and the corresponding State regulation) sets out detailed requirements for protective clothing for use by firefighters. As you have indicated, there is some compensation involved in the subject fire department and it has already been established that this department comes under the Act.

Under the penalties section of the State statute sanctions for violations of the type you have described would fall upon the employer. [§ 41-15-320, Code](#). Under the appropriate definitions contained in the Federal Law the employer is defined in such a way as to indicate that the organization itself would bear the responsibility for violations. [29 U.S.C. 630](#). No similar definition is found in the State statute. However, because of the manner in which the State and Federal programs are tied together the definition found in [§ 630](#) will suffice for the purposes of this discussion. Based upon the above, it is the opinion of this office that the Fire Chief or other administrative official in a volunteer fire department will not be exposed to liability for OSHA penalties. Rather, the penalties would be levied against the department itself.

[Section 41-15-320, Code](#), provides the answer to your second question. This section calls for stiffer penalties against the employer for willful or repeated violations of OSHA rules or regulations. If the official has knowledge that his orders are being ignored and takes no corrective action, he would expose the employer (the department) to higher penalties.

***2** I trust this has answered your questions sufficiently, if not, please feel free to call at your convenience.
Sincerely,

Clifford O. Koon, Jr.

Assistant Attorney General

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