

1980 WL 120961 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 7, 1980

*1 Honorable T. Ed Garrison
Route 2
Anderson, SC 29621

Dear Senator Garrison:

In a letter to this Office you requested an opinion as to the authority of a volunteer fire department at a fire scene in a situation where their presence was not requested. You referenced a situation where an asphalt truck developed a fire and the Sandy Springs Fire Department responded although they were not asked to respond by the individuals in charge of the asphalt truck.

Please be advised that my research has revealed that there is very little relevant statutory law or case law in this State which assists in clearly defining the authority of a volunteer fire department as to the situation described above. I have also discussed the situation with various individuals, including the State Fire Marshall's Office, but have been left with the impression that this is a matter that is not adequately defined.

I have been advised that the Sandy Springs Volunteer Fire Department was organized pursuant to Act No. 294 of 1961, which established the Anderson County Fire Protection System. Although Act No. 294 of 1961 authorizes the establishment of volunteer fire departments in various areas of Anderson County, no specific provisions were included which completely define the authority and responsibilities of a fire department at a fire scene. The provisions are basically limited to prohibiting interference with fire equipment. (See Section 5). However, Section 8 of Act No. 294 of 1961 states:

'[i]t is hereby made the special duty (as far as practical) of all peace officers who may be on duty and available for fire duty, to respond to all firm alarms and assist the department in the protection of life and property, in regulating traffic, maintaining order, and in enforcing observance of all sections of this act.' [Emphasis added].

It may be suggested that such section in stating the obligation of peace officers to 'assist the department' in the ways specified implies that a volunteer fire department is primarily responsible for protecting life and property, regulating traffic, and maintaining order at a fire scene. Such an interpretation suggests that as to the factual situation referenced above, the volunteer fire department should have been considered as being in charge of the fire scene.

However, again, the matter of the authority of a volunteer fire department at a fire scene is quite unclear. Furthermore, even if it were construed that pursuant to referenced Section 8 the volunteer fire department in the situation involving the asphalt truck should have been considered to have been in control, it is questionable what penalties could have been assessed against an individual who did not comply with the order of a fire department official in a situation as described above. Such is an area where statutory clarification would be advantageous.

If there are any questions concerning the above, please contact me.

*2 With kind regards, I am
Sincerely,

Charles H. Richardson
Assistant Attorney General

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