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Municipal Fire Protection

Fire protection is one of the oldest functions performed by municipal corporations. The need for fire protection in closely developed communities has often stimulated inhabitants to incorporate a town or city. While tremendous strides have been made in firefighting through the improvement of equipment, scientific training and constant research, the fact remains that hostile fires continue to be a fearsome and dreaded threat to homes and businesses. It would seem that problems connected with the municipal fire protection function would have been solved during the long history of the service. However, as old problems are solved, new problems appear.

Fire departments may be either paid or volunteer. They may be established either as a municipal department or a totally separate organization. The relationship between the municipality and the fire department differs based on how the department was established and whether it is considered a municipal department.

Municipal volunteer fire departments should not be confused with fire districts or community fire departments. Fire districts are authorized by state statute and are manned by either paid or volunteer firefighters. Community fire departments operate as private organizations and are supported by donations or by contracts with property owners. A municipal volunteer fire department, on the other hand, is a branch of the municipal government. Operating funds are appropriated by the governing body, and firefighters are volunteers who receive little or no reimbursement above actual expenses for their services.

The League has prepared a special report entitled The Municipal Volunteer Fire Department which answers basic organizational questions regarding volunteer fire departments. Copies may be obtained by contacting League headquarters.

Basic Authority

The creation of a fire department is at the discretion of the municipality. The basic authority for municipalities to provide fire protection services within the corporate limits is found in Section 11-43-140, Code of Alabama 1975. This statute is permissive rather than mandatory.

Section 11-43-5, Code of Alabama 1975, authorizes the municipal governing body to provide for the appointment of a chief of the fire department and to prescribe the duties of the chief. The courts have ruled that this section also authorizes the governing body to fix the salary of the fire chief. See, *Beasley v. McCorkle*, 184 So. 904 (Ala. 1938). The mayor may appoint the fire chief where the ordinance is silent as to appointing powers. See Section 11-43-81, Code of Alabama 1975. Section 11-43-160 of the Code of Alabama 1975, gives the city council the authority to remove any officer in the several departments, including the fire chief, but not city employees. The term "officer" includes all those positions specifically set forth in the Code of Alabama as "officers," as well as any position created by the city council pursuant to ordinance. AGO 2012-0039.

The council may delegate to commissioners by ordinance the power to control and manage such fire department under such rules and regulations as the commissioners or the council may prescribe. Section 11-43-140, Code of Alabama.

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, shall be 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. Section 36-19-3, Code of Alabama 1975. The chief of a municipal fire department or a municipally sanctioned volunteer fire department, who has complied with APOST standards may, if directed by the State Fire Marshall, issue a citation for the violation of a state law related to the matters set forth in Section 36-19-2 of the Code of Alabama 1975, relating to fire protection. AGO 2005-0198. A person under the age of 18 is prohibited from serving as a firefighter in a volunteer fire department. Section 25-8-43, Code of Alabama 1975.

Firefighters in a Fire Protection District may not perform routine traffic control in non-emergency circumstances. AGO 2011-0061. Volunteer firemen at the scene of a vehicle accident do not have arrest powers other than those of a private citizen.

The chief of a municipally sanctioned volunteer fire department may, under certain limited circumstances as set forth in AGO 2005-198, issue citations. A volunteer firefighter's privately-owned vehicle is not an authorized emergency vehicle unless designated as such by the chief of police of an incorporated city or the Director of Public Safety. Only authorized emergency vehicles may use red lights visible from the front of such vehicle. No vehicle other than an authorized emergency vehicle may have flashing white lights other than signal lights and emergency flashers authorized by section 32-5-241(d)(3) of the Code of Alabama. AGO 2009-0063.

A municipality cannot be held liable for the intentional torts of its employees, pursuant to §11-47-190, Code of Alabama 1975. In the case of *State v. Baumbauer*, 12 So. 2d 326 at 330 (1942), the Supreme Court of Alabama observed that the law does not impose a duty upon a municipality to establish and maintain a fire department. Once a city or town organizes and provides for a professional fire department, however, a duty is owed to the citizens of the city or town and the municipality may be liable for negligent acts committed in the performance of that duty. See, *Williams v. Tuscumbia*, 426 So. 2d 824 (Ala. 1983) and *Zeigler v. Millbrook*, 514 So. 2d 1275 (Ala. 1987). However, if a city creates a volunteer fire department, the municipality does not have a legally enforceable duty to provide skillful fire protection for the purposes of imposing municipal liability. *Hollis v. Brighton,* 885 So. 2d 135, 140 (Ala. 2004) (emphasis added). Municipalities should carefully consider their ability to provide adequate fire protection prior to organizing a department or agreeing to provide protection outside the municipal limits.

Since the decision of the Alabama Supreme Court in the case of *Jackson v. Florence*, 320 So. 2d 68 (Ala. 1975), which abolished governmental immunity for municipalities, cities and towns have been liable for negligent actions of their employees, including firefighters, which happen in the exercise of governmental functions such as firefighting. However, in 2009 the Alabama Supreme Court held that a "governmental entity" as defined in the Volunteer Service Act, is immune from civil liability if the damages or injury were not caused by the volunteer's willful or wanton misconduct and that a governmental entity could not be held vicariously liable for acts of a volunteer who was immune from liability under the Volunteer Service Act. *Wheeler v. George*, 39 So. 3d 1061 (Ala. 2009). Municipalities are not required to pay medical expenses incurred by firefighters in the exercise of their duties. However, all municipalities over 2,000 in population must provide workers compensation coverage for their employees. Municipalities of less than 2,000 in population may provide workers compensation coverage. Section 25-5-13, Code of Alabama 1975.

No direct authority exists for a municipality to provide fire protection within the police jurisdiction. This authority is implied by, and is necessarily incident to, the power of a municipality to provide for the health, welfare and sanitation in the police jurisdiction. Section 11-40-10, Code of Alabama 1975. In addition, the power to levy license taxes in the police jurisdiction under the police power implies the authority of the municipality to provide protection services. Section 11-5191, Code of Alabama 1975. And, the Attorney General has ruled that a municipality may expend public funds to equip and maintain a fire station in its police jurisdiction. AGO 1997-0234.

While the power exists, it is not imposed as a mandatory duty upon a municipality. For instance, in AGO 1999-0019, the Attorney General held that unless there is a contract, if a municipality does not receive any tax revenue from the police jurisdiction, the municipal fire department has no obligation to provide fire protection in the police jurisdiction. However, where a town is providing police and fire services within its police jurisdiction, albeit by contract and subsidies, businesses within the police jurisdiction of the town are subject to reasonable privilege and license taxes. AGO 2014-0008. Municipalities have adopted a variety of policies for fire protection services in the police jurisdiction. If a city levies and collects taxes to provide fire protection services, the city council is not allowed to establish an additional fee system that would charge individuals for fire protection services to the extent of their insurance coverage. AGO 2007-0116. In addition, the city may not seek to collect insurance proceeds from applicable policies held by individuals who reside in the corporate limits pursuant to the costs of EMS, hazardous material, and rescue services rendered by the department. If the city does not levy and collect license fees in its police jurisdiction, it may seek to collect insurance proceeds from applicable policies held by individuals who reside there pursuant to the costs of fire, EMS, hazardous material, and rescue services rendered by the fire department. AGO 2019-0012.

A municipality's authority over fire protection and rescue services in the police jurisdiction is not exclusive. If, however, a municipality undertakes to provide fire protection in its police jurisdiction, the services provided in the police jurisdiction should be provided equally throughout the police jurisdiction. E-911 boards, municipalities, and volunteer fire departments should work together to ensure the most efficient service to persons in their districts. A municipality may contract with an E-911 board and the municipality may contract with a volunteer fire department to provide service in a portion of the police jurisdiction, provided that the protection is equal to that provided elsewhere in the jurisdiction. AGO 2010-0103.

Procurement By Competitive Bidding

Section 41-4-124(d), Code of Alabama 1975, authorizes rescue squads and volunteer fire departments to procure supplies, services, or professional services through competitive bidding pursuant to Article 3 of Chapter 16 of Title 41 of the Code of Alabama 1975.

Firefighter Training

In 1975 the state Legislature created the Firefighters' Personnel Standards and Education Commission to govern the paid employees of each municipal firefighting agency. The law, codified at Sections 36-32-1 through 36-32-12, Code of Alabama 1975, as amended, requires all appointees as firefighters to meet certain minimum standards for firefighters as prescribed by the commission. Volunteer firefighters may be certified by the Commission, although certification is not mandatory. Candidates for volunteer firefighter certification must complete 160 hours of training within a 24-month period at a training center approved by the Commission. This training does not have to be taken during continuous sessions. The cost of such training is paid by the municipality. Section 36-32-7, Code of Alabama 1975; Ala. Fire College & Personnel Stnds Comm'n Rule 360-X-2-.01.

Pursuant to Act 2024-81 and beginning January 1, 2025, within six months of becoming certified, fire-protection personnel are required to complete one hour of training on interacting with individuals with sensory needs or invisible disabilities. After the initial training, fire personnel are required to get an additional hour of training on interacting with individuals with sensory needs or invisible disabilities every other year. Section 36-32-3.1(a), Code of Alabama 1975. The Commission is required to collaborate with a nonprofit entity that provides training on individuals with sensory needs or invisible disabilities to administer the training required by this section. The nonprofit entity shall provide the required training related to individuals with sensory needs or invisible disabilities without compensation. The training may be provided in person or online. The Commission shall ensure the entity chosen to administer the training annually reviews and updates the training to include changes and trends relating to individuals with sensory needs or invisible disabilities.

Any entity that hires a firefighter, within three years of the completion of the required training, shall reimburse the amount expended on the training to the governmental entity that paid for the training. Section 36-21-7, Code of Alabama 1975. For more information regarding reimbursement of training costs see Selected Reading Article number twenty-seven titled State Mandated Training for Municipal Personnel.

Firefighter Organizations

Section 11-43-143, Code of Alabama 1975, forbids strikes by firefighters. However, firefighters are given the authority to present proposals on working conditions to their employers by any representative of their own choosing.

Mandatory Disability and Cancer Benefits

Section 36-30-50, Code of Alabama 1975, requires municipalities with paid fire departments to provide and maintain sufficient insurance coverage on each career firefighter to pay claims for cancer diagnosed after the career firefighter has served 12 consecutive months. The law also requires that these benefits be made available to Volunteer firefighters on an optional basis.

The Code defines a paid fire department as any department or division of the state, a county or municipal government, an airport authority, or a fire district with paid employees assigned firefighting duties. Section 36-30-50 (b)(5), Code of Alabama 1975. Career firefighters are defined as "any person employed with the state, a county or municipal government, an airport authority, or a fire district who has obtained certification as a firefighter through and as defined by the Alabama Firefighters' Personnel Standards and Education Commission, or a firefighter employed by the Alabama Forestry Commission who has been certified by the State Forester as having met the wild land firefighter training standard of the National Wildfire Coordinating Group, and is offered typical employment health insurance coverage. Section 36-30-50 (b)(2), Code of Alabama 1975.

Typical employment benefits include health insurance coverage, but health insurance coverage is not the only type of typical employment benefits that may be offered to employees. Thus, if a paid fire department provides typical employment benefits to its employees, the department must provide this cancer coverage to a firefighter who has obtained certification as a firefighter through the Commission. AGO 2020-0031.

In the event a career firefighter is employed by multiple fire departments at the same time, the primary employer is responsible for the cancer coverage. Section 36-30-50(d)(1), Code of Alabama 1975. The primary employer is the employer who provides primary health insurance benefits to the career firefighters. AGO 2020-0031.

A beneficiary or dependent of a volunteer firefighter that passed away due to cancer that developed while performing fire suppression duties may present a claim for a death occurring in the line of duty according to Section 36-30-1, et seq, Code of Alabama 1975, upon presenting certain facts and circumstances. Act 2026-556.

Beyond the Police Jurisdiction

At the discretion of the governing body, a municipality may contract with other municipalities, counties, industries and residential and business areas to provide fire protection. Except as otherwise provided or prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. Section 11-102-1 et. seq., Code of Alabama 1975. In 1955, the Legislature adopted a law authorizing municipalities to send firefighting equipment to areas beyond the boundaries of the police jurisdiction. This law is found in Sections 11-43-141 and 11-43-142, Code of Alabama 1975. Section 11-43-141 states in part: "Whenever the necessity arises during any emergency resulting from fire or other public disaster, the firemen of any city or town, may, together with all necessary equipment, lawfully go or be sent beyond the corporate limits and police jurisdiction of such city or town to any point within the State of Alabama, to assist in meeting such emergency."

Citing this section, the Attorney General has ruled that a municipality may assist in fighting fires which occur beyond its corporate limits and police jurisdiction without reference to a definition of the word "emergency." AGO to Hon. Frank Amberson, September 4, 1963. In another opinion, the Attorney General ruled this section authorizes a municipality to send its firefighters and equipment beyond the corporate limits and police jurisdiction without compensation to the municipality. AGO to *Mayor V. H. Albright*, March 8, 1963.

However, a municipality may charge a fee for providing fire protection "outside the corporate limits." AGO 1995-0160. Section 11-43-142, Code of Alabama 1975, states "the governing body of any city or town may, in its discretion, authorize or require the fire department thereof to render aid in cases of fire occurring beyond their corporate limits and police jurisdiction, and may prescribe the conditions on which such aid may be rendered and may enter into a contract or contracts with other cities and towns, with counties or county boards, manufacturing or industrial concerns, or residential and business areas for rendering fire protection in such places on such terms as may be agreed upon…" While these are useful statutes which expressly authorize mutual aid agreements between municipalities, a municipal governing body should be extremely cautious about entering agreements to protect areas beyond the police jurisdiction. Before entering such an agreement, the governing body should consult ISO Commercial Risk of Atlanta, to determine possible effects on the insurance rating of the municipality. Furthermore, the contract or agreement should be worded so that the municipality cannot be held liable for breach of contract.

Rural Protection

Fire protection to unincorporated areas is provided by fire districts organized by state statute and by private volunteer fire departments. Local emergency management units also provide some services in this area. Fire protection authorities formed pursuant to Section 11-88-1, et seq., of the Code of Alabama are not required to provide services to their entire defined service territory. Residents within the territory who receive such services by virtue of a municipal fire department or a volunteer fire department should not be charged by the authority. Section 11-88-7(a)(24) allows fire protection authorities to charge reasonable rates, fees, and other charges for fire protection services. The determination of whether a particular rate or fee is reasonable must be made by the authority. AGO 2008-0008. A Water, Sewer, and Fire Protection Authority, formed pursuant to sections 11-88-1, et seq., is authorized to revise its rates and assess consumers in a manner that the Authority deems to be reasonable given the particular circumstances. AGO 2010-0004.

Because fire districts may be created as firefighting districts or firefighting and medical services districts, the types of calls to which the Volunteer Fire Department must respond depends on the type of district created in its bylaws. Such a Volunteer Fire Department is responsible for responding to all fire calls within its district. AGO 2010-0027. Fire protection authorities formed pursuant to section 11-88-1, et seq., of the Code of Alabama are not required to provide services to their entire defined service territory. Residents within the territory who receive such services by virtue of a municipal fire department or a volunteer fire department should not be charged by the authority. Section 11-88-7(a)(24) allows fire protection authorities to charge and revise from time to time reasonable rates, fees, and other charges for fire protection services. The determination of whether a particular rate or fee is reasonable must be made by the authority. AGO 2008-0008.

Establishing and Funding Volunteer Departments

A municipality may establish a municipal volunteer fire department by adopting an ordinance of general and permanent operation. Final control of a municipal volunteer fire department should be left in the hands of the municipal governing body.

To be certified as a volunteer fire department by the Alabama Forestry Commission, an entity must meet the requirements that are set forth in Section 9-3-17, Code of Alabama. Specifically, fire departments seeking volunteer certification must be an incorporated nonprofit organization or as an authority of a municipality, fire district, or other legal subdivision to be eligible for assistance from the Forestry Commission. Further, to be classified as a volunteer fire department under Section 9-3-17, there must be no less than 80 percent unsalaried membership in the department. AGO 2011-0064. Municipal volunteer fire departments can be funded by municipal appropriations, grants and/or donations. All expenditures for fire department purposes should be made through appropriation by the governing body. Municipal funds cannot be used to purchase equipment or supplies for a volunteer fire department without the knowledge and consent of the municipal governing body, or council.

AGO to Hon. Christine Clifton, September 20, 1955. A volunteer fire department is subject to the Competitive Bid and Public Works Laws. AGO 2012-0016.

A city may donate training funds under Section 9-3-18, Code of Alabama 1975, to a volunteer fire department that is not part of the municipal government without regard to the residence of its volunteers; however, it is highly suggested that the city enter into a contract with the volunteer fire department for the services in return for money donated, if such an agreement is intended. AGO 1982-0036 and AGO 2025-0046.

If a volunteer fire department is recognized or sanctioned by a city, funds collected by that agency become city funds and should be included in the written financial mayor's report to the council and should be audited with other city funds. The city council has final authority on the expenditure of these funds. If the funds are solicited by a group of volunteers not directly tied to the city, then these funds belong to that organization. See, AGO 1985-0129, and AGO 1994-0063. If a volunteer fire department is sanctioned by a municipality, funds received by the department must be audited along with all other municipal funds. AGO 1995-0050 and AGO 1994-0083.

Act 2023-510 reiterates that volunteer fire departments and volunteer rescue squads are public in nature and fulfill a necessary public purpose. Section 40-18-19.3, Code of Alabama 1975. Arguably, this legislative declaration constitutes additional authorization to expend municipal funds to support your local volunteer fire department or rescue squad regardless of whether the department or squad is part of your municipality. Furthermore, this Act clarifies some of the permissible uses by local fire department of funds that are designated as restricted for accounting purposes by the Department of Examiners of Public Accounts. Restricted funds are funds received from any of the following sources:

1. State grants;
2. County Appropriations;
3. Ad Valorem and Sales Taxes;
4. Fire fees and dues authorized by legislation;
5. Donations with restrictive provisions; and
6. Interest earned on deposits of restricted funds.

Pursuant to Act 2023-510, restricted funds can be used to purchase the following:

1. Kitchen equipment for the station, including refrigeration equipment, cooking equipment, microwaves, and other kitchen equipment. All kitchen equipment shall be the property of the department or squad.
2. Food to be stored or refrigerated at the station for on-site consumption by volunteer first responders and electrolyte replacement or sports drinks, water, and similar liquid sustenance in any form for use by volunteer first responders during training or on a fire or rescue call. Section 9-3-18.1(b), Code of Alabama 1975.

This is not an all-inclusive list. For more information regarding permissible uses of restrictive funds, review the Examiners of Public Accounts Financial and Compliance Guidelines for Volunteer Fire Departments at the following link: *https://alison.legislature.state.al.us/epa-audit-manual*.

Except where otherwise provided by law, the mayor is generally the appointing authority for firefighters in a municipal volunteer fire department, See Section 11-43-81, Code of Alabama 1975. The mayor of a city or town does not have oversight over who may be accepted as a local volunteer firefighter if the volunteer fire department is organized as a nonprofit corporation separate from the municipality. A volunteer fire department organized as a nonprofit organization with a board of directors as its governing body is separate and apart from the governance of the municipality in which the volunteer fire department is located. AGO 2009-0098.

Volunteer fire departments are not exempt from paying their prorated share of the cost of programs for the equalization of ad valorem taxes. AGO 1995-0287. A volunteer fire department is exempt from solid waste disposal fees under section 40-9-13 of the Code of Alabama. AGO 2011-0054.

Compensation for Volunteer Firefighters

If a person is compensated for volunteer work, that person could be considered an employee for purposes of the Fair Labor Standards Act (FLSA). The FLSA recognizes the generosity and public benefits of volunteering and does not seek to pose unnecessary obstacles to bona fide volunteer efforts for charitable and public purposes. In this spirit, in enacting the 1985 FLSA Amendments, Congress sought to ensure that true volunteer activities are neither impeded nor discouraged. Congress, however, also wanted to minimize the potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements in "volunteer" situations.

Section 3(e)(4)(A) of the FLSA and 29 C.F.R. §§ 553.101 and 553.103 indicate that an individual is a volunteer, not an employee of a public agency, when the individual meets the following criteria:

(1) Performs hours of service for a public agency for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered. Although a volunteer can receive no compensation, a volunteer can be paid expenses, reasonable benefits or a nominal fee to perform such services;

(2) Offers services freely and without pressure or coercion, direct or implied, from an employer; and

(3) Is not otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

Section 3(e)(4)(A) of the FLSA, 29 U.S.C. § 203(e)(4)(A), also permits public agency employees to volunteer their services to their employing public agency, as long as there is no coercion or undue pressure on the employee, and they do not provide the same type of services for which they are employed. The phrase "same type of services" means "similar or identical services." 29 C.F.R. § 553.103(a). See, Wage and Hour Opinion Letter FLSA2009-35.

Neither the FLSA nor the 1985 FLSA Amendments define the term "nominal fee." However, the Department of Labor has issued regulations providing guidance in this area. The regulations focus on preventing payment for performance, which is inconsistent with the spirit of volunteerism contemplated by the FLSA. Thus, a fee would not be considered nominal if it is, in fact, a substitute for compensation or tied to productivity. See 29 C.F.R. § 553.106(e); see also Wage and Hour Opinion Letter FLSA2005-51. Generally, a key factor in determining if a payment is a "substitute for compensation" or "tied to productivity" is "whether the amount of the fee varies as the particular individual spends more or less time engaged in the volunteer activities." Wage and Hour Opinion Letter FLSA2005-51. If the amount varies, it may be indicative of a substitute for compensation or tied to productivity and therefore not nominal. See id.; see also 29 C.F.R. § 553.106(e). Whether the nature and structure of payments made to individuals would result in their losing volunteer status is determined by examining the total amount of payments made (expenses, benefits, and fees) in the context of each particular situation. See, Wage and Hour Opinion Letter FLSA 2008-16.

Further, when a public agency employee volunteers, the Department of Labor will presume the fee paid is nominal as long as the fee does not exceed 20 percent of what the public agency would otherwise pay to hire a full-time employee for the same services. This 20 percent rule is derived from the FLSA and implementing regulations. See, Wage and Hour Opinion Letter FLSA 2005-51. A willingness to volunteer for 20 percent of the prevailing wage for the job is also a likely indication of the spirit of volunteerism contemplated by the 1985 amendments to the FLSA. See, Wage and Hour Opinion Letter FLSA 2006-28.

Section 11-43-12 of the Code does not prohibit a mayor or members of the city council from serving as volunteer firemen or volunteer fire chief, voting on matters related to the volunteer fire department, including budgets, spending, and fire-call compensation, so long as they do not receive compensation for their services from the fire department. Opinion to Honorable Joe C. Brantley, Mayor, Town of Flomaton, dated AGO 1997-0248; AGO 1997-0012 (opining an uncompensated volunteer fire chief does not hold an office of profit and could serve as a city council member.)

All municipal officers may be provided reimbursement for their expenses incurred in the performance of municipal duties. AGO to Hon. Paul Shipes, February 8, 1974. Municipalities are not required to secure medical insurance for their employees. Cities and towns can provide such coverage for their employees, including volunteer firefighters. AGO 1983-0337 (to Hon. Robert S. Milner, May 30, 1983). A city or town may not purchase disability insurance for members of the volunteer fire department unless a contractual relationship exists between the two entities. If a councilperson serves as a volunteer, he may receive such coverage provided he did not vote on it. AGO 1979-0282.

Municipalities may provide workers compensation coverage for volunteer firefighters. Each municipality should contact its insurance carrier about this coverage. Beneficiaries of volunteer firefighters are entitled to the death benefit provided by the state if the firefighter died while engaged in the performance of duties as a volunteer firefighter. AGO to Hon. William H. McDermott, February 26, 1975. In addition, the State of Alabama provides benefits to volunteer firefighters who are killed or disabled in the line of duty. See, Section 11-43-144, Code of Alabama 1975; Act 2026-556, codified in Section 36-30-8,

Code of Alabama 1975. The city may elect to provide for a pension system or an allowance for service-connected disabilities under the provisions of Section 11-43-144, Code of Alabama 1975. However, in the absence of a monetary allowance or pension system established for firemen injured in the line of duty by the city, the city does not have any liability imposed by law in favor of a disabled fireman qualified pursuant to Section 11-43-144, Code of Alabama 1975. AGO 1993-0254.

Act 2023-510 entitles volunteer first responders to a state income tax credit for the use of their personal motor vehicle to respond to fire, emergency, and rescue calls beginning January 1, 2024. The tax credit is allowed up to the amount of the tax liability of the taxpayer. The tax credit is not refundable or transferable and may not be carried forward to a subsequent tax year. A taxpayer claiming this tax credit may not also claim the same unreimbursed mileage as a deduction on the taxpayer's income tax return. The tax credit amount shall equal the total annual unreimbursed mileage at the standard mileage allowance for state employees pursuant to Section 36-7-22, Code of Alabama 1975. Total annual mileage shall be recorded and verified as follows:

1. After each fire, emergency, or rescue call, the head of the department shall verify in writing that a first responder used a personal motor vehicle to travel from his or her home or place of employment to the fire, emergency. or rescue call, and from which the first responder returned to his or her home or place of employment, indicating the total number of miles traveled.
2. At the end of the calendar year, the head of the department shall provide the first responder a signed statement of the total mileage for trips for the preceding year.

For purposes of this section. "head of the department" means in the case of a volunteer fire department the fire chief or assistant fire chief, and in the case of a rescue squad, the captain or squad leader.

Fire Insurance Rating

The fire insurance rating of a municipality is the grade assigned to it by fire insurance underwriters. The rating is based on the fire defenses of a city and on the physical conditions which pertain to fire insurance. Depending on the insurance company, the rate assigned to a municipality may directly affect the fire insurance premiums paid for coverage of properties situated within the corporate limits of the municipality. Rating engineers from ISO Commercial Risk periodically visit each municipality in the state to inspect the fire defense system. From such visits, a municipality may receive a better rating, retain its current rating, or receive a lower rating. Municipalities should consult with rating engineers to determine what is needed to improve ratings. In some instances, minor changes can result in a better rating to save property owners large sums in fire insurance premiums.

Under the fire insurance rating system, the highest classification designates the least fire protection and, therefore, results in higher insurance premiums. A lower classification brings with it a reduction in premiums.

The rating is determined by scores on items in fire protection defenses – water supply, fire department, fire alarm system, police department, fire prevention activities, building department and structural conditions.

Generally, the fire insurance rating of a municipality is applied to all properties located within the corporate limits of the municipality for fire insurance premiums. Different types of property within the municipality take different individual rates under the overall rate assigned to the city or town. It is possible, however, for a municipality to have a split rate.

Some years ago, the City of Huntsville annexed approximately 10 square miles of territory. Rather than rate the whole city down because of the dissipation of city fire defenses to cover the new territory, the rating engineers allowed the area within the old city limits to retain its existing classification while the newly-annexed area was given the highest classification in the protection grading system. In so doing, the city established a plan to upgrade the classification in the annexed area on a year-to-year basis until it was as good as the rating within the old corporate limits.

Effect of Outside Service

The problem of confining the firefighting service to the corporate limits of a municipality involves moral, economic, political and organizational considerations. Municipal officials are often reluctant to establish a firm policy on the question of whether to send firefighters and equipment beyond the corporate limits.

The debate usually begins with the question "Is it wrong to allow property to burn without sending assistance when equipment and firefighters are available?" Then it is pointed out that citizens of the municipality incorporated the area for protection and the citizens pay the costs of maintaining the services. Similarly, the question is raised about dissipating the available forces for protection inside the corporate limits. Then the argument is advanced that businesses in the police jurisdiction pay license taxes to the city based on the police power which includes protection services rendered in the area by the municipality. All the while there lingers the question of if the municipality extends services freely in the police jurisdiction

and the areas beyond, what are the advantages of incorporation and what reason would the inhabitants of the fringe areas have for annexing to the municipality? Last, and probably most controlling, is the question of economic costs and the effect which the extraterritorial fire service policy has on the insurance rating of the city or town.

Unlimited free service to all residences and businesses in the police jurisdiction and areas beyond would probably result in a higher, less desirable, fire insurance rating for a municipality. Conversely, if a municipality has sufficient equipment and firefighters to fight limited fires in areas beyond while still maintaining forces to fight fires within the corporate limits, the rating might not be affected. This is a matter which varies between municipalities. Care should be taken by the municipal governing body to consult with ISO officials before going too far in establishing an extraterritorial service policy.

Alternative Policies

Numerous policies could be adopted by municipalities to answer the question of extending fire services beyond the corporate limits. A municipality may flatly refuse to send any firefighters and equipment outside the corporate limits. Or, services may be extended to all businesses and residences in recognition of the taxes paid by such businesses. Or, services may be extended beyond the corporate limits based on a contract or agreement with extraterritorial property owners who reimburse the municipality for services rendered. Another factor which might enter into the determination of the fire service policy is the willingness of extraterritorial residents to pay for a rider on fire insurance policies which carry an agreement on the part of the insurer to pay the city for calls actually answered to the property and not exceeding a stipulated amount.

If a municipality adopts a policy to provide protection to extraterritorial areas within three miles of its firefighting units and the municipal forces meet certain minimums in equipment and personnel and alarm facilities, the extraterritorial property so protected enjoys what is known as a protected suburban rate, which lowers the cost of insurance premiums. This is a factor which the municipal governing body should take into consideration when deciding whether to extend free firefighting services to nontaxable properties beyond the corporate limits.

Another policy option should be mentioned. Should a municipality enter into mutual aid agreements with neighboring municipalities? ISO smiles upon such agreements in most cases, provided the firefighting forces do not leave the municipality unprotected when aid is sent to a city or town covered by the agreement. Such agreements are recommended for, and suited to, municipalities located in close proximity to each other. Again, the municipal governing body should seek the advice of the rating engineer before making a firm commitment with another municipality.

The Effect of Annexation

When property is annexed to a municipality it usually enjoys the insurance rating given to the municipality. A municipality is generally committed to protect all property within the corporate limits; therefore, an annexation automatically dissipates the strength of the firefighting forces of the municipality. For this reason, ISO maintains a close watch for annexations and, if a very large area is annexed to a municipality, engineers are sent in immediately to re-evaluate the fire defenses available to the whole area of the city or town.

The rating bureau has been most cooperative with municipalities in this respect. A municipality is rarely graded down because of an annexation, especially when the municipal governing body agrees to increase its fire defenses in a planned manner over future years and then follows the plan. As noted above, the old corporate limits of Huntsville maintained its rating when the city annexed 10 square miles while the newly-annexed area was given a different rating. The annexation did bring a better rate to the annexed area than it enjoyed prior to the annexation. Therefore, annexation does not automatically mean a change for the worse in the municipal insurance rate. Property annexed will generally enjoy a better rate, but care should be exercised when the annexation of a very large area is contemplated.

Accepting Subdivisions

New subdivisions can strain existing fire defenses. Most municipalities now have subdivision regulations which state that plats will not receive final approval until a minimum of public utilities and public improvements have been installed and approved by proper municipal officials or until the subdivider provides a bond payable to the municipality to ensure proper installation of such facilities.

Most subdividers are primarily interested in economic return for their efforts and investment. Therefore, it is vitally important for a municipality to ensure that permanent installations which affect the fire insurance rating of the municipality meet the standards required by ISO. For instance, minimum-sized water mains and adequately-spaced regulation fire hydrants should be installed. A municipality should ensure that such installations will be made within rating requirements at least as restrictive as those needed to meet the existing rate enjoyed by the municipality.

Surrender of Infants

Pursuant to Ala. Code Section 26-25-1, any fire station that is staffed 24 hours a day all year long with at least one emergency medical service personnel present is required to accept the surrendering of any infant 45 days or younger in each of the following circumstances:

1. The infant's parent delivers the infant to the fire station;
2. The infant's parent places the infant in a baby safety device that meets the requirements of Section 26-25-1.1, provided that the parent did not express an intent to return for the infant;
3. The infant's parent delivers the infant to an employee of the fire station, provided the employee is responding to an emergency call from a parent who expressed an intent to surrender and not return for the infant.

In accordance with Ala. Code Section 26-25-1.1, a baby safety device must be installed by a general contractor and meet the following criteria:

1. Be designed to permit a parent to anonymously place an infant in the device for purposes of surrendering the infant;
2. Be climate controlled;
3. Be installed in a conspicuous location;
4. Be equipped with a dual alarm system connected to the physical location where the device is installed- The dual alarm system shall trigger when an infant is placed into the device, shall be visually inspected twice per day, and shall be tested at least once per week;
5. Have a supporting frame of the device that is anchored to prevent movement of the unit as a whole;
6. Be under 24-hour camera surveillance, provided that the surveillance footage may only be viewed for purposes of investigating alleged child abuse or neglect or other criminal behavior related to the surrender of an infant to a baby safety device;
7. Meet any other requirements adopted by the Department of Public Health.

Fire stations are not required to have a baby safety device. However, any fire station that has a baby safety device installed shall post signage at the site of the device that clearly identifies the device and provides written and pictorial directions to the surrendering individual instructing him or her to open the access door, place the infant inside the device, and close the access door to engage the lock. Ala. Code Section 26-25-1.1. The signage shall be approved by the Department of Public Health and shall clearly indicate all of the following:

1. That an infant surrendered in a baby safety device may be no more than 45 days old;
2. That by placing an infant in the baby safety device, a parent is foregoing all parental responsibilities with respect to the infant and is giving consent for the state to take custody of the infant;
3. That damaging a baby safety device may constitute the crime of criminal mischief. Id.

The Legislature mandated the Department of Public Health to adopt rules relating to the installation, maintenance, and monitoring of a baby safety device including, but not limited to, the following:

- Rules providing for the purchase and installation of a baby safety device, including designating from where an emergency services provider may purchase a baby safety device;
- Rules providing for the maintenance of a baby safety device;
- Rules providing for training of emergency services providers with baby safety devices installed on its premises. Id.

A parent who surrenders an infant is not required to provide or be asked to provide any information relating to his or her identity. If the identity of the parent is known by a fire station employee, he or she is required to keep the identity confidential. Any fire station who takes possession of an infant shall perform any act necessary to protect the physical health or safety of the infant. No later than the close of the first business day after the date on which the fire station takes possession of an infant, the station is required to notify the Department of Human Resources that the station has taken possession of the infant and take the infant to a licensed hospital for a medical evaluation. Once notified, the Department will take custody of the infant and is required to reimburse the fire station for any costs incurred prior to the infant being placed in the care of the Department. Fire stations and firefighters are immune from liability for any civil action arising out of any action or omission taken pursuant to the requirements of Title 26 Chapter 25 of the Alabama Code.

Opinions of the Attorney General and Court Cases

- Fire Records of fire districts are public records. AGO 1992-0351.
- District records maintained as a computer data base are public records. AGO 1992-0274.
- An uncompensated volunteer fire chief does not hold an office of profit and could serve as a city council member. AGO 1993-0012.
- The city may elect to provide for a pension system or an allowance for service-connected disabilities under the provisions of Section 11-43-144, Code of Alabama 1975. However, in the absence of a monetary allowance or pension system established for firemen injured in the line of duty by the city, the city does not have any liability imposed by law in favor of a disabled fireman qualified pursuant to Section 11-43-144, Code of Alabama 1975. AGO 1993-0254.
- Departments may provide standby fire protection for brush fires and controlled agricultural burns, but equipment cannot be used to fill swimming pools and ponds for residences. AGO 1995-0085.
- Sections 36-19-1 through -3, Code of Alabama 1975, do not authorize deputies and assistant fire marshals to issue citations for municipal ordinance violations. Citations may only be issued by municipal police officers. AGO 1997-0221.
- Section 11-43-12 of the Code does not prohibit a mayor or members of the city council, all serving as volunteer firemen, from voting on matters related to the volunteer fire department, including budgets, spending, and fire-call compensation, so long as they do not receive compensation for their services from the fire department. AGO 1997-0248.
- The proceeds of a local tax which provides that the funds shall be used "for fire protection and rescue services" may be used to establish an ambulance service within a municipal fire department. AGO 1998-0222.
- In *Rainsville v. State Farm Insurance Co.,* 716 So. 2d 710 (Ala. Civ. App. 1998), the Alabama Court of Civil Appeals held that the city insurance policy did not cover the city or the firefighter who had an accident while driving his own car to the fire station.
- Volunteer, nonprofit fire departments that act gratuitously and in good faith are entitled to immunity provided by Section 6-5-335 of the Code. Whether the immunity applies in other situations can only be determined by a court of competent jurisdiction. AGO 1999-0045.
- A councilmember may serve as a volunteer firefighter and be reimbursed for expenses or receive an expense allowance. The councilmember may drive a fire department vehicle home if the officials in charge of the department authorize it. The ethics commission should also address this question. AGO 1999-0165.
- Funds of volunteer fire departments sanctioned by a municipality are under the control of the municipal governing body. AGO 2001-0059.
- Pursuant to their authority to protect the health, safety and welfare of the public, volunteer fire departments may enter private property to extinguish a fire. Volunteer, nonprofit fire departments acting gratuitously and in good faith are entitled to immunity provided in Section 6-5-335 of the Code of Alabama. However, the liability of firefighters, fire departments and municipalities, in general, can only be determined by a court of competent jurisdiction. AGO 2001-0151.
- The requirements of membership and payment of dues are valid requirements for eligibility to vote on matters before a volunteer fire department if the bylaws require membership and payment of dues in order to vote. AGO 2001-0138.
- Pursuant to section 11-43-142 of the Code of Alabama, a City is authorized to contract and provide fire service to residents outside its corporate limits and police jurisdiction. AGO 2003-0125.
- A volunteer fire department is exempt from building inspection fees levied by the county. AGO 2004-0044.
- The following persons may enter into any school to inspect and enforce state fire prevention and protection laws: the State Fire Marshal; employees of the State Fire Marshal's office; the chiefs of police and fire departments; the mayor, if there is no fire department; the sheriff; and those persons acting under the authority of these officials as assistants to the fire marshal. AGO 2005-0183.
- A volunteer fire department certified by the Alabama Forestry Commission is subject to the Open Meetings Law. AGO 2006-0108.
- National Fire Incident Reporting System forms are public records except when specific records or portions thereof can be demonstrated by a municipal fire department to fall within a recognized exception. AGO 2006-0134.

- A Water, Sewer and Fire Protection District must follow the procedures of the Local Government Records Commission established pursuant to section 41-13-23 of the Code of Alabama, regarding the destruction of any of its records, including the length of time that the records must be kept. 2007-0016.
- A volunteer search and rescue squad that is not associated with the state or a political subdivision is not a public safety agency for purposes of an emergency communications district. The commissioners of the Emergency Communications District have the authority to determine if volunteer fire departments and rescue squads are to be dispatched as primary responders to a request for emergency services. AGO 2007-0021
- Current law does not specifically prohibit persons 16 years of age and older from riding in fire trucks to the scene of a fire. If the Alabama Department of Labor determines that such activities are a danger to life and limb, they may promulgate rules and regulations that regulate or restrict the ability of persons who are under 18 years of age. AGO 2007-0104.
- A town council may require its municipally sanctioned volunteer fire department to provide the town with unredacted copies of fire and emergency medical services reports to keep on file for use in determining the reimbursement of expenses of department personnel making fire and medical calls. AGO 2007-0111.
- A Water, Sewer, and Fire Protection Authority is authorized to revise its rates and assess consumers in a manner that the Authority deems to be reasonable given the particular circumstances. AGO 2010-0004.
- An E-911 Board may provide for an emergency communication system and may provide radios, which will be used to receive dispatch calls, to a volunteer rescue squad. AGO 2010-0019.
- An action to enforce a lien for unpaid fire dues by a Fire District is subject to a twenty-year statute of limitations. AGO 2010-0056.
- The Alabama Firefighters' Personnel Standards and Education Commission/Alabama State Fire College may employ off-duty municipal firefighters and paramedics during their "off time" as educational adjunct fire instructors for the Commission's "open enrollment" training classes to teach educational training classes to other firefighters and paramedics, including his or her own coworkers who may also be enrolled in such classes. This employment does not violate section 11-43-12 of the Code of Alabama. AGO 2011-0019.
- A volunteer fire department is subject to the Competitive Bid and Public Works Laws. AGO 2012-0016.
- The County E-911 Board should honor a request made by resolution from the municipality to dispatch, within the corporate limits, the ambulance service provider that the municipality requests to be dispatched. Any private ambulance service provider that is selected by the municipality as the exclusive provider within the municipality, must be selected in compliance with the Competitive Bid Law. AGO 2012-0077.
- A Fire District may contract with a Water Authority for the use, installation, and maintenance of fire hydrants. The Authority and District should cooperate to enable the District to provide the most effective fire protection for a reasonable cost for its residents. AGO 2012-0092.
- Because a Town has the authority to make expenditures to provide a fire department, the Town may expend municipal funds to raise money for its Volunteer Fire Department if the town council determines the expenditure serves a public purpose. AGO 2015-0058.
- In the aldermanic form of government, as a general rule, the mayor is the appointing authority for all employees and officers whose appointment is not otherwise provided by law, and the city council is the appointing authority for certain municipal officers. AGO 2014-0007.
- Section 11-43-160 of the Code of Alabama gives the city council the authority to remove any officer in the several departments, but not employees. The term "officer" includes all those positions specifically set forth in the Code of Alabama as "officers," as well as any position created by the city council pursuant to ordinance. An officer is limited to a person that exercises some level of authority, presumably over employees, and performs some discretionary, policymaking functions. AGO 2012-0039.
- The fire chief of the City 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. AGO 2015-0034.

- City sued for negligent and/or wanton hiring, training, or supervision of individual firefighters who allegedly failed to recover all of decedent's remains from fire scene. The Alabama Supreme Court held that volunteer fire department did not become professional fire department not entitled to immunity by fact that city donated money to it; city could not be vicariously liable for firefighters' alleged negligence; and city could not be liable for wanton or intentional conduct. *Ex parte Labbe*, 156 So. 3d 368 (Ala. 2014).
- Where a town is providing police and fire services within its police jurisdiction, albeit by contract and subsidies, businesses within the police jurisdiction of the town are subject to reasonable privilege and license taxes. AGO 2014-0008.
- The North Chilton Volunteer Fire Department may respond to calls in a county adjacent to Chilton County if authorized by its bylaws and no funds received from the tax levied for fire, medical, and emergency services in Chilton County are used on such calls for equipment, materials, personnel compensation, or otherwise. AGO 2012-0034.
- If the City of Springville does not levy and collect license fees in its police jurisdiction, it may seek to collect insurance proceeds from applicable policies held by individuals who reside in the police jurisdiction pursuant to the costs of fire, emergency management services ("EMS"), hazardous material, and rescue services rendered by the city's fire department. Because the city levies and collects taxes to fund the services of its fire department, the city may not seek to collect insurance proceeds from applicable policies held by individuals who reside in the corporate limits pursuant to the costs of EMS, hazardous material, and rescue services rendered by the fire department. AGO 2019-0012.
- Section 40-9-13 of the Code of Alabama exempts a volunteer fire department from the payment of the fee required by Section 32-8-6(a)(l) of the Code of Alabama for the application of a certificate of title. AGO 2020-0016.
- Under the Police Officer's and Firefighter's Survivors Education Assistance Act, whether death by suicide occurs "in the line of duty" is a factual determination to be made by the Tuition Eligibility Board. AGO 2023-0005. Act 99-245 does not authorize the Fire District to levy a tax on sales, service, and rental transactions within the district. The authority to levy such a tax would require an amendment to the local act. The Fire District does have the authority to increase service charges within the district as set forth in Act 99-245. AGO 2023-0011.