



**ATTORNEY GENERAL OPINIONS**  
**OP – 6512**  
**JUNE 21, 1968**

May 14, 1968

Honorable Robert Y. Thornton  
Attorney General  
Supreme Court Building  
Salem, Oregon 97310

Attention: Peter Herman, Assistant

Sir:

By way of clarification of your previous opinion No. 6491, in reference to the responsibilities and duties of local fire officers, we would like to ask the following questions:

1. Is a volunteer fire officer, who has very little time or opportunity, expected to become familiar with and enforce all of the extensive fire protection regulations of the state rather than only those obviously recognized hazards that come to his attention in the normal course of his duties?
2. Would a local fire officer be expected to actively search for any violations of state fire protection statutes and/or adopted regulations?
3. Would notification of a hazard directed to the Office of State Fire Marshal be considered a reasonable and adequate discharge of any such duties or would the local fire officer be expected to take direct and immediate action within the limits of his authority?

Very truly yours,

C. Walter Stickney  
State Fire Marshal

CWS:maf

# FIRE AND LIFE SAFETY AWARENESS I

ROBERT Y. THORNTON  
ATTORNEY GENERAL

STATE OF OREGON  
DEPARTMENT OF JUSTICE  
SALEM

June 21, 1968

Mr. C. Walter Stickney  
State Fire Marshal  
668 Church Street N.E.  
Salem, Oregon 97310

No. 6512

In connection with our recent opinion No. 6491 (dated May 13, 1968) you ask the following question:

"1. Is a volunteer fire officer, who has very little time or opportunity, expected to become familiar with and enforce all of the extensive fire protection regulations of the state rather than only those obviously recognized hazards that come to his attention in the normal course of his duties?"

In the previous cited opinion we stated

"In conclusion and in answer to your question it is our opinion that local fire officials by virtue of their office are not only assistants to the State Fire Marshal, but also along with him are personally under the legal duty to take whatever action is reasonable necessary to correct or prevent violations of fire prevention and protection statutes and regulations."

Your first question raises the issue of to what extent "a volunteer fire officer, who has very little time or opportunity" must become familiar with and enforce all the extensive fire protection regulations of the state.

You advise that for the purposes of this question and the other questions you ask you have in mind volunteers who are within the class of officers listed in ORS 476.060, which provides:

"All fire marshals in those governmental subdivisions having such officers, and where no such officer exists, the chief of the fire department of every city or rural fire protection district in which a fire department is established. The marshal or chief or chief of police, officer of any city or town in which no fire department exists, and the constables within their districts outside of cities and towns shall be, by virtue of the offices held by them, assistants to the State Fire Marshal without additional recompense, subject to the duties and obligations imposed by law, and shall be subject to the direction of the State Fire Marshal in the execution of the provisions of this section and ORS 476.070, 476.090, 476.090 and 476.210." (Emphasis supplied)

In 43 A. Jur., Public Officers, § 267 p. 82, it is stated:

"Every public officer is bound to use reasonable skill and diligence in the performance of his official duties, particularly where rights of individuals may be jeopardized by his neglect. In other words, he is bound, virtute officii, to bring to the discharge of his duties that prudence, caution, and attention which careful men usually exercise in the management of their own affairs." (Emphasis supplied)

As a matter of what is sound public policy the above recited rule that public officers must exercise reasonable skill and diligence in the performance of their official duties can be the only possible rule. That

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is, unless public officers, such as, for example, fire protection and prevention officers, are under the legal duty to do their best in protecting the public from fire hazards, the public has no way of knowing whether such officers are in fact properly performing their duties and providing the protection for the public for which purpose such officers were chosen in the first place.

In the case of the local volunteer fire officer we see no reason for applying a different rule. That is, the local volunteer fire officer must exercise reasonable skill and diligence in the performance of his duties. 43 Am. Jur., supra, p. 82.

What is "reasonable" skill and diligence will depend at least in part upon the circumstances and exigencies with respect to fire hazards in the local community in which such officer operates.

It is clear, however, that the local fire officer cannot develop the necessary skill to notice, ferret out and eliminate existing fire hazards unless he also acquires a reasonable working knowledge of the fire protection regulations and statutes of the state.

In this regard what would be a "reasonable working knowledge" of fire protection and prevention statutes and regulations will depend in large measure upon the specific directions and supervision the State Fire Marshal gives to the local fire officer with respect to the manner of performance of such fire officer's duties.

Thus ORS 476.060, supra, which makes all local fire officers by virtue of their office "assistants" to the state Fire Marshal also provides that such local fire officers

" \* \* \* shall be subject to the direction of the State Fire Marshal in the execution of the provisions of this section \* \* \*."

In other words it is largely up to the State Fire Marshal in the performance of his duties as the chief enforcement officer of the state's fire prevention and protection statutes and regulations to define and delineate the duties his "assistants" (the local fire officers) and to supervise the manner which such duties are performed by such local officers.

In answer to your first question, therefore, it is our opinion that local fire officers, even though they may only be volunteers, are under the legal duty to use reasonable skill and diligence in the performance of their duties. Such legal duty also includes the duty of acquiring a reasonable working knowledge of the state's fire prevention and protection statutes and regulations.

What is reasonable skill and diligence in the performance of the officer's duties and what is a reasonable working knowledge of state statutes and regulations will depend not only upon the circumstances as to fire hazards in a particular community but also in large measure upon the supervision and direction furnished by the State Fire Marshal to such local fire officers who by virtue of their office are the State Fire Marshal's assistants. ORS 476.060, supra.

Your second question is as follows:

Would a local fire officer be expected to actively search for any violations of state fire protection statutes and/or adopted regulations?

In view of our answer to and analysis of your first question the answer to your second question requires an affirmative answer.

With regard to the question of just how much a local volunteer fire officer should do we point out again that it is appropriate and desirable for the State Fire Marshal, who is in the best position to evaluate the

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practical capabilities of the many volunteer fire personnel in the State of Oregon, to define and delineate for the local fire officers the duties he expects them to perform as his "assistant" and to provide supervision and training for such officers as to the manner in which they perform such duties. ORS 476.060, supra.

"3. Would notification of a hazard directed to the Office of State Fire Marshal be considered a reasonable and adequate discharge of any such duties or would the local fire officer be expected to take direct and immediate action within the limits of his authority?"

A flat negative or affirmative answer cannot be given to this question.

For example, a fire hazard might exist which presents such an immediate danger to the public health and safety that only immediate on-the-spot correction of the hazard could avoid the danger of injury to the public.

In such cases it is our opinion that mere notification of the State Fire Marshal by the local fire officer could not be a reasonable and adequate discharge by such local officer of the duties of his office.

However, not all fire hazards present an urgent need for local, corrective on-the-spot action.

Again, as we pointed out in our answer to your first question the manner in which local fire officers respond to local fire hazards will in part have to be delineated by appropriate regulation and supervision of the State Fire Marshal.

Very truly yours,

ROBERT Y. THORNTON  
Attorney General

By   
Peter S. Herman  
Assistant

PSH jk gp