



HENRY McMASTER
ATTORNEY GENERAL

March 2, 2009

Jeff Allen, Fire Marshal
Irmo Fire District
6017 St. Andrews Road
Columbia, South Carolina 29212

Dear Fire Marshal Allen:

In a letter to this office you indicated that an issue has arisen regarding circumstances in which commissioned law enforcement officers who are also employed by and are members of the fire department that originally responded to a fire remains at the fire scene to conduct an origin and cause investigation. You indicated that some individuals have asserted that even though the referenced individual may be an employee of the fire department, he or she may not remain on the scene to conduct the investigation without keeping other members of the fire department on the scene with him or her. However, other individuals have asserted that since the investigator is an employee of the fire department, even though he is a commissioned police officer, that person is an extension of the fire department charged by statute with determining the origin and cause of all fires within their jurisdiction. These individuals are of the opinion that the investigator may release all other fire department members and legally remain on the scene to conduct an investigation at least until all reasonable accidental causes have been eliminated and a further detailed search is required at which point a search warrant must be obtained.

In Michigan v. Tyler, 436 U.S. 499 (1978), the United States Supreme Court held that entering a building to fight a fire requires no warrant and once in the building, fire officials may remain there for a reasonable time to investigate the cause of the blaze. The Court stated that

[f]ire officials are charged not only with extinguishing fires, but with finding their causes. Prompt determination of the fire's origin may be necessary to prevent its recurrence, as through the detection of continuing dangers such as faulty wiring or a defective furnace. Immediate investigation may also be necessary to preserve evidence from intentional or accidental destruction. And, of course, the sooner the officials complete their duties, the less will be their subsequent interference with the privacy and recovery efforts of the victims. For these reasons, officials need no warrant to remain in a building for a reasonable time to investigate the cause of a

blaze after it has been extinguished. And if the warrantless entry to put out the fire and determine its cause is constitutional, the warrantless seizure of evidence while inspecting the premises for these purposes also is constitutional.

Id. at 510. The Court summarized its holding to indicate that

...an entry to fight a fire requires no warrant, and that once in the building, officials may remain there for a reasonable time to investigate the cause of the blaze. Thereafter, additional entries to investigate the cause of the fire must be made pursuant to the warrant procedures governing administrative searches.

Id. at 511.

As noted, additional inquiries to investigate the cause of the fire requires compliance with warrant procedures governing administrative searches. In Michigan v. Clifford, 464 U.S. 287 (1984), the Court expounded upon Tyler holding that “[c]ircumstances that justify a warrantless search for the cause of a fire may not justify a search to gather evidence of criminal activity once that cause has been determined.” *Id.* at 294. The Court determined that the scope of a search pursuant to Tyler is “limited to that reasonably necessary to determine the cause and origin of a fire and to ensure against rekindling.” *Id.* at 297. Of course, the Court did recognize that evidence of criminal activity that comes into plain view during a search to determine the cause of a fire may be preserved without a warrant. *Id.* at 295 n. 6. In Michigan v. Clifford, the Court determined that a warrantless, nonconsensual search of a fire damaged home by fire investigators was a violation of the homeowners’ Fourth Amendment rights where the search was conducted at 1:30 p.m. following a fire that was extinguished by 7:04 a.m. and where all the fire officials and law enforcement officers had previously left the scene.

The Irmo Fire District was created by a successful referendum pursuant to Act No. 387 of 1963 to provide fire protection services in a specified portion of Lexington County. See Ops. Atty. Gen. dated August 14, 1996 and March 28, 1990. As to powers to enforce laws, Act No. 387 provides that

[a]ll members of the truck company of the district may direct and control traffic at the scene of any fire in the area of the county and enforce the laws of this State relating to the following of fire apparatus, the crossing of fire hose and interfering with firemen in the discharge of their duties in connection with a fire in a like manner as provided for the enforcement of such laws by peace officers.

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An opinion of this office dated October 19, 1990 determined that the Irmo Fire District qualified as a special purpose district. S.C. Code Ann. §§ 6-11-1410 et seq. provides for emergency powers of fire districts.¹ Section 6-11-1420 provides that

[n]otwithstanding any other provisions of law, authorized representatives of the Fire Authority having jurisdiction, as may be in charge at the scene of a fire or other emergency involving the protection of life or property or any part thereof, have the power and authority to direct such operation as may be necessary to extinguish or control the fire, perform any rescue operation, evacuate hazardous areas, investigate the existence of suspected or reported fires, gas leaks, or other hazardous conditions or situations, and of taking any other action necessary in the reasonable performance of their duty. In the exercise of such power, the Fire Authority having jurisdiction may prohibit any person, vehicle, vessel, or object from approaching the scene and may remove or cause to be removed or kept away from the scene any person, vehicle, vessel, or object which may impede or interfere with the operations of the Fire Authority having jurisdiction. (emphasis added).

A prior opinion of this office dated March 29, 2002 dealt with the question of whether a fire chief should be considered in charge of a fire scene even though other public safety officials may be present and whether a fire chief would have authority over such other emergency services. That opinion cited an opinion dated November 15, 1991 dealing with a similar question in stating 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 and concluded that...(Section 6-11-1420)...does not appear to address the manner in which various officials should cooperate when jurisdictions overlap...[D]epending on the facts and the officials involved, varying conclusions may be applicable.

An opinion dated November 2, 2001 commented that while the specific answer to the question of which agency - law enforcement or the fire authority - would have primary authority at a fire scene would depend on the specific facts involved, "...it seems apparent that the Fire Authority's power could extend to the 'whole surroundings' if such was necessary to extinguish or control the fire, etc."

Consistent with the above, it is the opinion of this office that an "authorized representative of the Fire Authority" who would include a member of the fire department of the Irmo Fire District, even though that individual is also a commissioned law enforcement officer, who responded to a fire

¹The term "fire authority" for purposes of such provisions is defined by Section 6-11-1410 as "...any lawfully and regularly organized fire department, fire protection district, or fire company regularly charged with the responsibility of providing fire protection and other emergency services incident thereto."

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under exigent circumstances may remain at a fire scene to conduct an origin and cause investigation consistent with Michigan v. Tyler, supra, and Michigan v. Clifford, supra. It would not appear necessary that other members of the fire department would have to remain on the scene for that individual to carry out the aforesaid duties.

With kind regards, I am,

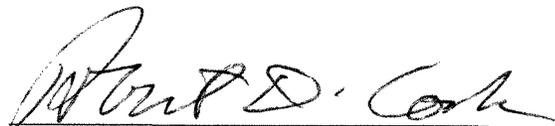
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
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REVIEWED AND APPROVED BY:



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