



HENRY McMASTER
ATTORNEY GENERAL

November 1, 2010

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

Dear Investigator Allen:

In a letter to this office you referenced recently-enacted Act No. 320 of 2010 relating to the Irmo Fire District. Section 1 of such Act authorizes the Board of Fire Control to adopt certain rules and regulations. Such provision grants additional authority to the Board in stating that:

SECTION 1. Section 5 of Act 387 of 1963 is amended by adding:

"(i)...(The Board is authorized)...(t)o adopt rules and regulations as it considers necessary to ensure that any land or building in the fire district is maintained properly and does not present a fire or safety hazard. Before final adoption of these rules and regulations not less than two public hearings must be held for comments."

SECTION 2. Section 8 of Act 387 of 1963 is amended to read:

"Section 8. All 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 these laws by peace officers. A fire chief or his designee has the same authority that a peace officer has to enforce rules and regulations adopted and other laws that affect the mission of the fire district." (emphasis added).

Investigator Allen
Page 2
November 1, 2010

While the Governor vetoed the legislation, both the House and Senate overrode the vetoes and the Act became effective on June 2, 2010.

Referencing such, you have raised two questions:

First, if the Irmo Fire District passes a rule or regulation, we will not be enforcing a county or municipal ordinance. Subsequently, we may not be able to write the citation on a county or municipal summons. Are we now allowed by this law to create our own summons paperwork and if so, is there an acceptable legal format that we should use or is it lawful for us to write a violation of our rule or regulation on a county or municipal summons? If we need to create our own, once these summons forms are in use, what is required in order for them to be acceptable in our town and county courts?

Second is the matter of law enforcement authority. The chief and myself already have police certification. If we are allowed to enforce our own rules and regulations do we need to (and more importantly is there a legal standing that will allow us to) get the investigation section of the Fire District certified as a police agency in South Carolina. I am aware that, for example, in the State of Georgia, the City of Savannah issued an executive order that authorized the arson investigation unit of the Savannah Fire Department to obtain full police agency certification. Is there a similar procedure available here in South Carolina for government agencies?

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 powers of fire districts. In particular, Section 6-11-1420 states 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.

Investigator Allen
Page 3
November 1, 2010

Other enforcement powers are set forth in Sections 6-11-1430 (evacuation from buildings adjacent to burning structure), 6-11-1440 (notice of evacuation of local area) and 6-11-1450 (interference with operations of fire authority).

A review of Act No. 387 of 1963, which establishes the Irmo Fire District, does not reveal any specific endowment of the Fire District with any extraordinary powers. Section 8 of such Act prior to its amendment stated 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.

Section 9 of such Act provides that

[i]t is unlawful to interfere with a member of a fire department in the discharge of his duties in the district or to interfere with any fire apparatus used by the fire department in the district, and any person so offending shall be subject to a fine of not exceeding one hundred dollars or imprisonment not exceeding thirty days.

S.C. Code Ann. § 56-7-80 states that

(A) [c]ounties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the ordinance summons is responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity.

(B) The uniform ordinance summons may not be used to perform a custodial arrest. No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons...

(G) This statute does not prohibit a county or municipality from enforcing ordinances by means otherwise authorized by law.

I am unaware of any general statutory authority to enforce a rule or regulation by the issuance of an ordinance summons. Prior opinions of this office have recognized the authority to enforce

Investigator Allen
Page 4
November 1, 2010

rules or regulations by use of a summons ticket in specific instances. An opinion of this office dated February 8, 1995 referenced S.C. Code Ann. § 55-11-210 which stated that the police officers employed by the Greenville-Spartanburg Airport District were authorized to

...enforce all laws and the rules and regulations authorized in this section, and such officers shall be authorized to issue summonses for violations in the manner authorized for state [troopers]....

Another opinion dated June 20, 1980 referenced S.C. Code Ann. § 44-67-50 which currently states that the director of the State Department of Health and Environmental Control

...may designate trained employees of the department to be vested with police powers to enforce and administer the provisions of this chapter and all rules and regulations adopted thereunder. The director shall also have authority to contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of this chapter. In addition, state highway patrol officers, enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, fire marshals and police officers, and those employees of the Department of Health and Environmental Control and the Parks, Recreation and Tourism Department vested with police powers all shall enforce the provisions of this chapter and all rules and regulations adopted thereunder and are hereby empowered to issue citations to or arrest, without warrant, persons violating any provision of this chapter or any of the rules and regulations adopted hereunder. (emphasis added).

I am unaware of any authority for your fire district to create your own summons paperwork for use in citing a violation of a fire district rule or regulation. Instead, it appears that a uniform traffic ticket could probably be used in such instances. As referenced above, Section 8 of Act 387 of 1963 was amended to specifically state that “[a] fire chief or his designee has the same authority that a peace officer has to enforce rules and regulations adopted and other laws that affect the mission of the fire district.” Pursuant to S.C. Code Ann. § 56-7-15, a uniform traffic ticket “...may be used by law enforcement officers to arrest a person for an offense committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrates court and municipal court.” Referencing such authority, in the opinion of this office, consideration could be given to the use of a uniform traffic ticket by “a fire chief or his designee” to enforce the rules or regulations adopted pertaining to the Irmo Fire District assuming, of course, that the penalties are within the jurisdiction of a magistrate or municipal court judge. To resolve any ambiguity, I would strongly recommend that legislation be sought specifically authorizing such use.

Investigator Allen
Page 5
November 1, 2010

As to your separate question regarding any procedure for getting the investigation section of the Fire District certified as a police agency in South Carolina, I am unaware of any authority for such certification as a police agency. If such is desired, consideration could be given to seeking specific legislative authority for such certification.

With kind regards, I am,

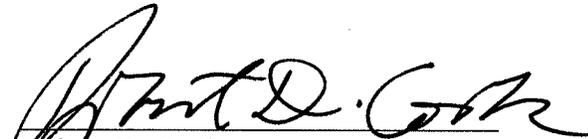
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
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REVIEWED AND APPROVED BY:



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