

7179 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 2, 2001

Captain C.E. Allison
Cheraw Police Department
258 Second Street
Cheraw, South Carolina 29520

Re: Authority at Fire/Accident Scene

Dear Captain Allison:

In a letter to this Office, you have raised questions concerning the authority of a fire chief with reference to law enforcement officers at fire and automobile accident scenes. Specifically, you ask:

1. In a scene with a house fire, I assume the fire chief would have authority over the house itself, however does he have the authority of the whole surroundings, as to instructing officers to clear a scene or wanting someone arrested for loitering around a fire scene, and blocking roads at a fire scene.
2. The question has also [come] up, that since the fire chief has requested that anytime there is an automobile accident, he wants the fire department dispatched, does he actually have any legal authority over the police department, in the roadway at an accident unless there is actually a vehicle fire, and if the vehicle is on fire, does he have any authority over the law enforcement officer over how to handle the scene.

Question 1

Generally, S.C. Code Ann. §§6-11-1410 et seq. (Emergency Powers Act) sets forth the power and authority of a "Fire Authority" at the scene of a fire. A "Fire Authority" is defined in 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." The Cheraw Fire Department would be considered such a "Fire Authority." Section 6-11-1420 sets out the powers of a "Fire Authority" and provides as follows:

Request Letter

Captain Allison
Page 2
November 2, 2001

[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.

This Office has previously issued opinions dated April 21, 1998, November 15, 1991, and April 5, 1984, related to your questions. I have attached copies of those opinions for your review. This Office has consistently commented with reference to the interplay between law enforcement and fire authority 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; the Act does not appear to address the manner in which various officials should cooperate when such jurisdictions overlap." (See Attached opinions). While the specific answer to your question would be dependant 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.

Additionally, Section 6-11-1420 gives the Fire Authority the express power to "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" It is conceivable, depending on the nature of the fire scene, that blocking roads and removing those persons loitering would be necessary and appropriate. In fact, Section 6-11-1430 gives the Fire Authority the power to "... evacuate or cause to be evacuated all persons within and adjacent to burning structures, open fires, dangerous gas leaks, flammable liquid spills, and transportation incidents."

As for the fire chief "wanting someone arrested for loitering," Section 6-11-1450 provides that "[a]ny person who obstructs the operations of the Fire Authority in connection with extinguishing any fire, or other emergency, or disobeys any lawful command of the fire official or officer of the Fire Authority who may be in charge at such a scene, or any part thereof, or any police officer assisting the Fire Authority, is guilty of a misdemeanor" The actual arrest for such violation would probably have to be executed by a law enforcement officer with the power to arrest after he/she determines the existence of probable cause.

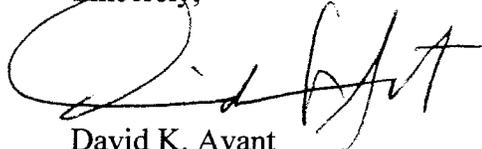
Captain Allison
Page 3
November 2, 2001

Question 2

This Office has previously addressed questions concerning the application of Sections 6-11-1410 et seq. to automobile accidents. In the April 5, 1984, opinion, the following question was considered: “[w]hat is the scope of the word 'emergency?' Does it include an automobile accident where there is no fire or immediate danger of fire?” In response, we stated that “... it is apparent that the legislature intended the term 'emergency' to encompass a broad range of situations,” and opined that “it may be seen that 'transportation incidents' are covered by Section 6-11-1430 (evacuation powers), and that a court could also find an automobile accident to be within the scope of 'other hazardous conditions or situations' contemplated by Section 6-11-1420.” Accordingly, it is likely that a fire authority would have the authority to exercise the powers set out in Section 6-11-1420 at an accident scene as long as the situation dictated (i.e. a true emergency jeopardizing life or property). Again, there is no provision setting forth a “chain of command” related to the fire authority and law enforcement. Perhaps your agency and the Cheraw Fire Department should develop some protocol for dealing with such emergency situations.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

DKA/an
Enclosures