



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-047

June 17, 2015

The Honorable Terry Rice
State Senator
Post Office Box 2195
Waldron, Arkansas 72958

Dear Senator Rice:

This is in response to your request for my opinion concerning the Midland Volunteer Fire Department, which you identify as “a non-profit [that] is separate and apart from the City of Midland.” By way of background, you report that “[t]he department is concerned about and needs clarification on the available contracting methods regarding coverage area and funding between a non-profit volunteer fire department and municipalities and/or counties.” You further report that “[i]t is their understanding Act 106 of 2015 may have an effect on this matter once it becomes law.” You then ask:

1. Can an incorporated nonprofit [volunteer] fire department enter into a contract, agreement or interlocal agreement with a municipality or county and is one of these methods preferred over the other?
2. Can you explain how an interlocal agreement would affect a non-profit volunteer fire department?

RESPONSE

I must respectfully decline to state an opinion as to the preferred method for a nonprofit volunteer fire department to contract with a city or a county. Nor can I address your second question regarding the effect of an interlocal agreement. These questions cannot be satisfactorily addressed without considering their particular context. Additionally, depending upon the questions’ context or

purpose, providing an answer may be tantamount to giving private legal advice, which I am specifically prohibited from doing.¹

In response to the question whether a nonprofit volunteer fire department can enter into a contract, agreement or interlocal agreement with a municipality or county for fire protection services, it is my opinion that the answer under current law is generally “yes” as to a contract with a county, and “perhaps yes” as to a contract with a municipality. I cannot definitively opine regarding an “agreement” or “interlocal agreement,” without knowing precisely what sort of arrangement is contemplated by the use of these terms.²

In my opinion, generally, a county may contract with a nonprofit corporation so long as the contract is supported by adequate consideration and serves a proper public purpose.³ And providing necessary fire protection clearly constitutes a proper governmental end.⁴ With regard to a city contracting for the provision of fire protection services, a statute currently declares that “[t]he city council shall establish fire departments....”⁵ This might suggest that a city cannot currently fulfill its obligation to provide fire protection services for its inhabitants by contracting with a nonprofit volunteer fire department.⁶ But beginning July 22, 2015, the new law you have noted – Act 106 of 2015 – will amend Ark. Code Ann. § 14-53-101 to add the following subsection specifically authorizing contracts or interlocal agreements between cities and certified fire departments:⁷

¹ Ark. Code Ann. § 25-16-701 (Repl. 2014).

² I will note, however, that an agreement between a county and a private, nonprofit volunteer fire department would not appear to be a “county interlocal agreement” under Ark. Code Ann. § 14-14-910 (Repl. 2013), which authorizes such agreements between counties and other *public agencies or political subdivisions* to perform any service or undertaking which any contracting party is authorized by law to perform. *Id.* at (a). Similarly, the Interlocal Cooperation Act, Ark. Code Ann. § 25-20-101 *et seq.*, authorizes the joint or cooperative exercise of power or authority by agencies having “governmental powers,” *id.* at § 25-20-104(a) – a category of agency that would appear to exclude a private, nonprofit fire department.

³ *Accord* Op. Att’y Gen. 2012-007 (and opinions cited therein).

⁴ *See* Ark. Code Ann. § 14-14-802(b)(2)(D)(iii) (county’s specific authority to make provision for fire prevention and protection services).

⁵ Ark. Code Ann. § 14-53-101(a) (Repl. 2013)

⁶ *But see* Op. Att’y Gen. 97-234; Op. Att’y Gen. 2014-009.

⁷ Because Act 106 does not contain an emergency clause or a specified effective date, it will be effective on July 22, 2015. *See* Op. Att’y Gen. 2015-044.

In lieu of establishing its own fire department under this section [Ark. Code Ann. § 14-53-101], the city council by ordinance may enter into a contract or interlocal agreement for city fire protection with an existing fire department certified by the Arkansas Fire Protection Services Board.

Fire departments may apply for annual certification by the Director of the Office of Fire Protection Services pursuant to Ark. Code Ann. § 20-22-806 (Repl. 2014).⁸ Included within the category of “fire department” subject to certification are “membership fee-based private fire departments” and the entire range of “volunteer fire departments.”⁹ Thus, beginning July 22, 2015, there will be specific statutory authority for a city to “enter into a contract or interlocal agreement” with an existing nonprofit volunteer fire department that is certified through the Office of Fire Protection Services.

I suggest that any city or fire department seeking to enter into any contract or agreement in this regard consult local counsel for further information and guidance.

Deputy Attorney General Elisabeth A. Walker prepared this opinion, which I hereby approve.

Sincerely,



LESLIE RUTLEDGE
Attorney General

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⁸ The Director of the Office of Fire Protection Services is responsible for carrying out the administrative directives of the Arkansas Fire Protection Services Board. Ark. Code Ann. § 20-22-805(b) (Repl. 2014).

⁹ Ark. Code Ann. § 20-22-802(4) (Repl. 2014).