January 22, 1996

OPINION NO. 96-001

Roger E. Glick
Executive Administrator
State Board of Emergency
Medical Services
240 Parsons Avenue
P.O. Box 7167
Columbus, Ohio 43205-0167

Dear Executive Administrator Glick:

You have submitted a request for an opinion concerning the meaning of the term "volunteer fire fighter," as used in R.C. 4765.55. As stated in your letter, the executive director of the State Board of Emergency Medical Services, in cooperation with the fire fighter and fire safety inspector training subcommittee of the State Board of Emergency Medical Services, is required to adopt standards to regulate state and local fire service training programs. Pursuant to R.C. 4765.55, such standards "shall not require more than thirty-six hours of training" for volunteer fire fighters. You, therefore, ask who qualifies as a "volunteer fire fighter" for purposes of this statute.

State Board of Emergency Medical Services

In Am. Sub. S.B. 98, 119th Gen. A. (1992) (eff. Nov. 12, 1992), the General Assembly created the State Board of Emergency Medical Services within the Division of Emergency Medical Services in the Department of Public Safety. R.C. 4765.02. Pursuant to R.C. 4765.03(A), the Director of Public Safety is responsible for appointing a full-time executive director for the Board. The general powers and duties of the Board are set forth in R.C. 4765.10, which states in part:

> (A) The state board of emergency medical services *shall* do all of the following:
> (1) Administer and enforce the provisions of this chapter and the rules adopted under it;
> ....
> (7) Work with the office of state fire marshal in coordinating the training of fire

> fighters and emergency medical services personnel when possible.[1] The office of state fire marshal shall cooperate with the board to achieve this goal.
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> ....
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> (B) The Board *may* do any of the following:
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> ....
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> (2) Enter into reciprocal agreements with other states that have standards for accreditation of emergency medical services training programs and for certification of EMTs-basic, EMTs-I, or paramedics that are substantially similar to those established under this chapter and the rules adopted under it.... (Emphasis and footnote added.)

The Board's primary duties are related to the various aspects of providing emergency medical services, *i.e.*, services provided by EMTs-basic (emergency medical technicians-basic), EMTs-I (emergency medical technicians-intermediate), and paramedics. *See* R.C. 4765.01(F) (defining "emergency medical service"). *See, e.g.*, R.C. 4765.05 (oversight of prehospital emergency medical services); R.C. 4765.06 (establishment of statewide emergency medical services incidence reporting system); R.C. 4765.09 (recommendations for the operation of ambulance service organizations and emergency medical service organizations); R.C. 4765.15-.18 (approval or accreditation of emergency medical services training programs and continuing education programs); R.C. 4765.22-.23 (issuance of teaching certificates for such programs); R.C. 4765.28-.39 (certification and authority of EMTs-basic, EMTs-I, and paramedics).

Fire Safety Training Programs

In Am. Sub. S.B. 98 the General Assembly transferred to the executive director of the State Board of Emergency Medical Services the duties formerly imposed upon the State Superintendent of Public Instruction regarding fire service and fire safety inspector training programs.[2] R.C. 4765.55 states in pertinent part:

> The executive director of the state board of emergency medical services shall, with the advice and counsel of the subcommittee of the state board of emergency medical services for fire fighter and fire safety inspector training, assist in the establishment and maintenance by any state agency, or any county, township, city, village, or

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[1] Pursuant to R.C. 3737.33, the State Fire Marshal must conduct "a training school for firemen, including volunteer firemen, of any political subdivision of the state, and for other persons interested in the vocation of firefighting and desiring to attend." R.C. 3737.33 also requires the Fire Marshal to establish "the training program and all rules governing qualifications for admission to the academy."

[2] Am. Sub. S.B. 98, 119th Gen. A. (1992) (eff. Nov. 12, 1992), renumbered R.C. 3303.07 (1977-1978 Ohio Laws, Part II, 3023, 3034 (Am. Sub. H.B. 590, eff., in part, July 1, 1979)) as R.C. 4765.55.

> school district of a fire service training program for the training of all paid and *volunteer fire fighters* and fire safety inspectors in this state. The executive director, with the advice and counsel of the subcommittee, *shall adopt standards* to regulate such fire fighter and fire safety inspector training programs. The standards may include, but need not be limited to, provisions for minimum courses of study, minimum hours of instruction, attendance requirements, required equipment and facilities, qualifications of instructors, basic physical and methods training required of fire fighters and fire safety inspectors, and training schedules. *The standards adopted to regulate training programs for volunteer fire fighters shall not require more than thirty-six hours of training*.
>
> ....
>
> Nothing in this section invalidates any part of [R.C. 3737.33] relative to the fire training academy. (Emphasis added.)

R.C. 4765.55 thus requires the executive director of the State Board of Emergency Medical Services, with the advice of the fire fighter and fire safety inspector training subcommittee, to assist various public entities in the establishment and maintenance of fire service training programs and to adopt standards to regulate fire service training programs. In so doing, however, the Director may not adopt a standard that requires more than thirty-six hours of training for "volunteer fire fighters." R.C. 4765.55.

Volunteer Fire Fighter for Purposes of R.C. 4765.55

You specifically question the meaning of the term "volunteer fire fighter," as used in R.C. 4765.55. This term is not defined by statute. As noted in your opinion request, however, the word "volunteer," as used in R.C. Chapter 4765, means "a *person who provides emergency medical services* either for no compensation or for compensation that does not exceed the actual expenses of service and training for providing such services part time." R.C. 4765.01(J) (emphasis added). Your concern is whether the definition of "volunteer" set forth in R.C. 4765.01(J) applies to that word as used in conjunction with the term "fire fighter" within R.C. Chapter 4765.

Thus, under the above Revised Code definition, in order to be a "volunteer" for purposes of R.C. Chapter 4765, one must, among other things, provide emergency medical services. As used in R.C. Chapter 4765, "emergency medical service" means:

> any of the services described in [R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39] that are performed by emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics. "Emergency medical service" includes such services performed during any transport of a patient, including transports between hospitals and transports to and from helicopters.

R.C. 4765.01(F). Thus, the term "emergency medical service" is defined as a service that an emergency medical technician-basic, an emergency medical technician-intermediate, or a paramedic is authorized by statute to perform. Because an emergency medical service is, by definition, a

service performed only by an EMT-basic, an EMT-I, or a paramedic, it is clear that the definition of "volunteer" set forth in R.C. 4765.01(J) does not apply to the use of "volunteer" in conjunction with the term "fire fighter."[3]

The ambiguity present in the various statutory references to "firemen," "volunteer firemen," "fire fighters," and "volunteer fire fighters" was recognized by the court in *Dougherty v. Torrence*, 2 Ohio St. 3d 69, 442 N.E.2d 1295 (1982). In interpreting the meaning of the phrase "[m]embers of the fire department," as used in R.C. 701.02, the court stated:

> Although some sections of the Revised Code classify fire fighters as volunteer or paid, part-time or full-time and temporary or permanent, other sections of the code, including R.C. 701.02, merely use the generic terms "firemen" and "members of the fire department." Apparently, the General Assembly uses the particular classifications when it seeks to differentiate among the various categories of fire fighters and the general terms when differentiation is not desired. The word "firemen" would, therefore, include volunteer as well as paid fire fighters, unless otherwise specified.

Id. at 71, 442 N.E.2d at 1297 (footnotes omitted). While the court in this case recognized that in certain instances the General Assembly intends a distinction between fire fighters based upon whether or not one is paid, the court did not conclude that the term "volunteer fire fighter" always refers to a fire fighter who is not compensated. *See generally* 1987 Op. Att'y Gen. No. 87-084 (interpreting "volunteer fireman," as used in R.C. 505.011).

A question has been raised as to whether the use elsewhere within R.C. 4765.55 of the phrase "all paid and volunteer fire fighters" indicates the General Assembly's intent that, for purposes of R.C. 4765.55, a "volunteer" fire fighter is any fire fighter who is not paid for his services. Such a reading may be argued under the theory that generally words in a statute are to be construed according to their common meaning. R.C. 1.42. *See generally Webster's New World Dictionary* (2d college ed. 1978) 1593 (defining the adjective "volunteer" as meaning, in part, "1. composed of volunteers, as an army 2. serving as a volunteer, usually without compensation"). This rule of statutory construction is limited, however, as follows: "Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." R.C. 1.42; *Youngstown Sheet & Tube Co. v. Lindley*, 56 Ohio St. 2d 303, 383 N.E.2d 903 (1978). The phrase "volunteer fire fighter" in other statutory contexts is not limited to fire fighters who provide their services without compensation. *See, e.g.*, R.C. 146.01(B) (for

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[3] Although some fire fighters are also certified as EMTs-basic, EMTs-I, or paramedics and perform emergency medical services in the course of their fire fighting duties, this fact has no relevance to their qualification as volunteer fire fighters for purposes of R.C. 4765.55. *See generally* 1981 Op. Att'y Gen. No. 81-103 (separating volunteer fire fighters' fire fighting activities from emergency medical services for purposes of immunity under former R.C. 4731.90 (currently at R.C. 4765.49)).

purposes of the volunteer fire fighters' dependents fund, included within the meaning of "volunteer fire fighter" is "[a] duly appointed member of a fire department on either a nonpay or part-pay basis" with certain qualifications); R.C. 505.22(C) (for purposes of R.C. 505.23 (insurance for volunteer firemen), "volunteer firemen" means "all members in good standing of the volunteer fire department of such political subdivision"). Thus, it may also be argued that the term "volunteer fire fighter" has acquired a technical or particular meaning.

Your letter specifically mentions that the rules adopted in accordance with former R.C. 3303.07 (now at R.C. 4765.55) defined the term "volunteer fire fighter" as "a person who receives an appointment by any township, city, village, or fire district and serves on less than a full-time basis for the performance of firefighting activities." 5 Ohio Admin. Code 3301-63-01(S).[4] According to this definition, in order to qualify as a "volunteer fire fighter," one must be *appointed* by a township, city, village, or fire district and must serve on less than a full-time basis for the performance of fire fighting duties. Whether one is paid for the performance of such fire fighting activities is irrelevant to the determination of whether one qualifies as a "volunteer fire fighter" under rule 3301-63-01(S). Examination of Am. Sub. S.B. 98 does not indicate that the General Assembly intended that the persons subject to regulation under former R.C. 3303.07 necessarily be different under R.C. 4765.55, only that the entity responsible for such regulation be changed. In the absence of a showing that the General Assembly intended to change the meaning of "volunteer fire fighter" by the amendments made in Am. Sub. S.B. 98, the previously adopted definition of "volunteer fire fighter" set forth in rule 3301-63-01(S) is also a possible interpretation of that term for purposes of R.C. 4765.55.

Duty to Implement R.C. 4765.55

The nature of a public officer's duty to interpret statutes that he is required to enforce was discussed in 1989 Op. Att'y Gen. No. 89-055 at 2-236, as follows:

> The responsibility of implementing the provisions of R.C. Chapter 117 has been placed by the General Assembly upon the Auditor of State. *See, e.g.*, R.C. 117.10-.11; *see also* 1984 Op. Att'y Gen. No. 84-067. It is your duty, as Auditor of State, to interpret and apply the provisions of R.C. Chapter 117. In order to carry out such duty, you have discretion to adopt and implement an interpretation of "public office" that is consistent with R.C. 117.01(D) and with general provisions of statutory construction. In adopting and implementing that definition, you may consider the interpretation that has been given by courts to similar definitions appearing elsewhere in the Revised Code, such as the interpretation set forth in [*State ex rel. Fostoria v. Fostoria Hospital Ass'n*, 40 Ohio St. 3d 10, 531 N.E.2d 313 (1988)]. You may, however, also consider such factors as the language of R.C. Chapter 117 and the history of its provisions, prior administrative interpretation, and the purposes

[4] Although Am. Sub. S.B. 98 transferred R.C. 3303.07 to R.C. 4765.55, the provisions of 5 Ohio Admin. Code Chapter 3301-63 have not been rescinded.

that R.C. Chapter 117 seeks to attain.

See also 1986 Op. Att'y Gen. No. 86-076 (an administrative body may exercise its discretion in adopting any reasonable interpretation of a statute that it has the duty of implementing).

The analysis set forth in Op. No. 89-055 applies as well to the Executive Director of the State Board of Emergency Medical Services in implementing R.C. 4765.55. R.C. 4765.55 imposes upon the executive director of the State Board of Emergency Medical Services, in cooperation with the subcommittee for fire fighter and fire safety inspector training, the responsibility for implementing the provisions of that statute. The executive director, in cooperation with the fire fighter and fire safety inspector training subcommittee, therefore, has the discretion, in the absence of a statutory definition, to interpret the term "volunteer fire fighter," as used in R.C. 4765.55. *See generally* 1985 Op. Att'y Gen. No. 85-007 (Attorney General has no authority to exercise discretion on behalf of another state official). In addition to the considerations outlined in Op. No. 89-055, you may also wish to consider, in interpreting the term "volunteer fire fighter" as used in R.C. 4765.55, former statutory provisions governing the same or similar subjects and the consequences of a particular construction. R.C. 1.49. Because R.C. 4765.10(A)(7) requires the State Board of Emergency Medical Services, when possible, to work with the office of State Fire Marshal to coordinate the training of fire fighters and emergency medical services personnel, it may also be useful to work with the State Fire Marshal in defining the term "volunteer fire fighter" for purposes of R.C. 4765.55.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. The definition of "volunteer" set forth in R.C. 4765.01(J) does not apply to the use of "volunteer" in conjunction with the term "fire fighter" for purposes of R.C. 4765.55.

2. Because it is within the discretion of the executive director of the State Board of Emergency Medical Services, in cooperation with the fire fighter and fire safety inspector training subcommittee of the State Board of Emergency Medical Services, to interpret and implement the provisions of R.C. 4765.55, he may define the term "volunteer fire fighter," as used in that statute, in any manner he determines to be reasonable.

Respectfully,

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January 22, 1996

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SYLLABUS: 96-001

1. The definition of "volunteer" set forth in R.C. 4765.01(J) does not apply to the use of "volunteer" in conjunction with the term "fire fighter" for purposes of R.C. 4765.55.

2. Because it is within the discretion of the executive director of the State Board of Emergency Medical Services, in cooperation with the fire fighter and fire safety inspector training subcommittee of the State Board of Emergency Medical Services, to interpret and implement the provisions of R.C. 4765.55, he may define the term "volunteer fire fighter," as used in that statute, in any manner he determines to be reasonable.