

OPINION NO. 73-101

Syllabus:

The Firemen's Training Academy established pursuant to R.C. 3737.42, is not governed by the provisions of R.C. 3303.07, but is conducted by the State Fire Marshal independently of the Department of Education.

To: James Caldwell, State Fire Marshal, Dept. of Commerce, Columbus, Ohio
By: William J. Brown, Attorney General, October 12, 1973

Your request for my opinion is as follows:

There is some question concerning the construction and interrelated meaning of Sections 3737.42 and 3307.03[sic] of the Ohio Revised Code.

This office would greatly appreciate any effort you might extend in obtaining an Attorney General's Opinion on this matter. The problems now encountered by this office in relation to the new Fire Academy can only be relieved by such an opinion.

The question is as follows: How does the enactment of 3307.03[sic] relate to the validity and force of 3737.42 ORC.

I assume you refer to R.C. 3303.07 instead of R.C. 3307.03 since the latter is not germane to the subject matter.

R.C. 3737.42 reads as follows:

The fire marshal shall establish and 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 fire-fighting and desiring to attend. The school shall be known as the Ohio state firemen's training academy.

The fire marshal shall establish the training program and all rules and regulations governing qualifications for admission to the academy. He may require competitive examinations to determine the fitness of prospective trainees so long as the examinations or other criteria for admission to the academy are not

inconsistent with Chapter 143. of the Revised Code.

The fire marshal shall determine tuition costs which shall be sufficient in the aggregate to pay the costs of operating the academy. The costs of acquiring and equipping the academy shall be paid from appropriations made by the general assembly to the fire marshal for that purpose, or from gifts or grants received for that purpose.

The firemen, during the period of their training, shall receive compensation as determined by the political subdivision which sponsors them. Such political subdivisions may pay the tuition costs of the firemen they are sponsoring. (Emphasis added.)

With this Section obviously in mind, the General Assembly two years later enacted R.C. 3303.07 for the purpose of requiring the Superintendent of Public Instruction to assist any state agency, county, township, city, village or school district to establish a fire training program for the training of all paid and volunteer fire fighters of the state. 133 Ohio Laws 707, 710. R.C. 3303.07 reads as follows:

The state superintendent of public instruction shall, with the advice and counsel of the advisory committee for fire fighter training, assist in the establishment and maintenance by any state agency, or any county, township, city, village, or school district of a fire service training program for the training of all paid and volunteer fire fighters in this state. The state board of education shall adopt standards to regulate such fire fighter training programs which 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 training schedules. The state superintendent of public instruction shall provide for the classification and chartering of such training programs and may revoke any charter for failure to meet standards. The state superintendent of public instruction shall prescribe a certificate which shall be issued by it to each person satisfactorily completing a chartered training program.

The advisory committee for fire fighter training consisting of seven members shall be approved by the state superintendent of public instruction, one member being selected by each of the following: The Ohio State Firemen's Association, the Ohio Association of Professional Fire Fighters, the Ohio Fire Chiefs Association, Inc., the Ohio Inspection Bureau, the Inter-

national Association of Fire Chiefs, Inc., the International Association of Fire Fighters, and the State Fire Marshal. The advisory committee may select a chairman who shall serve for a term of one year.

Nothing in this section invalidates any part of section 3737.42 of the Revised Code relative to the fire training academy.
(Emphasis added.)

The last paragraph of the above quoted Section distinguishes the Firemen's Training Academy and preserves all aspects of the act creating the same. This language prevents any implied repeal of any part of R.C. 3737.42.

It is apparent that the Legislature intended to establish two separate and autonomous training programs for fire fighters. As State Fire Marshal, you are required by R.C. 3737.42 to establish and conduct the Firemen's Training Academy, and to establish the training program, admission requirements, and tuition. The Academy is clearly not such a training program as is contemplated by R.C. 3303.07. It needs no charter from the Department of Education, being established by statute. Its program of instruction is established by the State Fire Marshal, not by the Superintendent of Public Instruction.

I note that political subdivisions may hire as fire fighters only those persons who hold certificates prescribed by the Superintendent of Public Instruction pursuant to R.C. 3303.07. See R.C. 505.38, 737.08, and 737.22. This fact indicates that the curriculum of the Firemen's Training Academy is not intended to substitute for the training program, but is perhaps a more specialized, supplementary training program. However, the exact nature of the program is not specified by statute, but is left up to your discretion. It is nevertheless clear that the two programs are to be conducted independently of each other.

In specific answer to your question, it is my opinion and you are so advised that the Firemen's Training Academy, established pursuant to R.C. 3737.42, is not governed by the provisions of R.C. 3303.07, but is conducted by the State Fire Marshal independently of the Department of Education.