

OPINION NO. 80-075**Syllabus:**

The requirements for volunteer fire fighters contained in R.C. 505.38(A), R.C. 737.08, and R.C. 737.22 apply only to those volunteer fire fighters appointed to the fire department of a township, township fire district, city or village and do not apply to volunteer fire fighters who are members of a private fire company under contract with a township, township fire district, city or village.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: William J. Brown, Attorney General, November 13, 1980

I have before me your request for my opinion as to whether volunteer fire fighters of a private fire company, under contract with a township, fire district, city or village, come within the purview of R.C. 505.38, 737.08 or 737.22, as amended by Am Sub. H.B. 590, 112th Gen. A. (1978) (eff. July 1, 1979). You pose your question in the context of several statutory provisions relative to "private volunteer fire companies," specifically R.C. 146.01, 505.38, 505.41, 505.44, 717.02, 737.08, and 737.22.

Am. Sub. H.B. 590, among other things, extended the training requirement for permanent full-time paid members of a fire department to any person appointed as a volunteer fire fighter of the fire department of any township or township fire district, city, or village. The statutory certification requirements are now virtually identical for permanent full-time paid and volunteer members of the fire department of a township or township fire district, R.C. 505.38(A), a city, R.C. 737.08, and a village, R.C. 737.22. The following is representative of the certification requirements:

In each township or fire district which has a fire department, the head of such department shall be a fire chief, appointed by the board of township trustees, except that in a joint fire district the fire chief shall be appointed by the board of fire district trustees. The board

shall provide for the employment of such fire fighters as it considers best, and shall fix their compensation. No person shall be appointed as a permanent full-time paid member, whose duties include fire fighting, of the fire department of any township or fire district unless such person has received a certificate issued by the state board of education under section 3303.07 of the Revised Code evidencing his satisfactory completion of a fire fighter training program.

. . . .

No person who is appointed as a volunteer fire fighter of the fire department of any township or fire district after July 1, 1979, shall remain in such a position unless within one year of his appointment he has received a certificate issued by the state board of education under section 3303.07 of the Revised Code evidencing his satisfactory completion of a fire training program. (Emphasis added.)

R.C. 505.38(A). It should be noted that, in addition to the training certification, Am. Sub. H.B. 590 amended R.C. 505.38(A) to require a physical examination of volunteers appointed to the fire department of a township or fire district.

The language employed by the legislature to define the class of volunteer fire fighters subject to the requirements of Am. Sub. H.B. 590 is clear, unequivocal and definite: "[n]o person who is appointed as a volunteer fire fighter" of "the fire department of the township or fire district," R.C. 505.38(A), "a city fire department," R.C. 737.08, or "a village fire department," R.C. 737.22. This language requires no interpretation and must be applied accordingly. R.C. 1.42; Provident Bank v. Wood, 36 Ohio St. 2d 101, 105, 304 N.E. 2d 378, 381 (1973). By its express terms, Am. Sub. H.B. 590 contains requirements for persons who are (1) publicly appointed (2) as volunteer fire fighters (3) to the fire department of the designated political subdivision. Applying the statute accordingly, I must conclude that members of a "private volunteer fire department" are not subject to the requirements imposed on volunteer fire fighters by Am. Sub. H.B. 590.

First, volunteer fire fighters of a private fire company under contract with a township, fire district, village or city are not appointed by the political subdivision as contemplated by Am. Sub. H.B. 590. Rather, such volunteer fire fighters are members of an association which has, as an entity, contracted to provide fire services to the political subdivision. Furthermore, the fact that a member of a "private fire company" is a "volunteer fire fighter" as defined by R.C. 146.01(A), or that such company is a "private volunteer fire company" as defined by R.C. 146.01(B), does not suggest the applicability of R.C. 505.38(A), 737.08, or 737.22 to such volunteer fire fighters. R.C. 146.01 expressly limits the scope of the definitions contained therein to R.C. Chapter 146, which establishes and governs the "volunteer fire fighters' dependents fund." R.C. 146.07. There is no statutory justification for extending the scope of the definitions relative to volunteer fire fighters in R.C. 146.01 beyond the designated statutory limits.

Additionally, in each of the statutes in question, the appointment of volunteer fire fighters is predicated upon the existence of an established fire department to which appointments may be made. R.C. 505.38(A) ("[i]n each township or fire district which has a fire department"); R.C. 737.08 ("[t]he fire department of each city"); R.C. 737.22 ("[e]ach village establishing a fire department"). It may not be concluded that private volunteer fire fighters are members of, or comprise, "the fire department" of a township, fire district, city, or village, even if the private fire company for which they work has contracted to provide all fire-related services to the political subdivision. As noted by my predecessor in 1956 Op. Att'y Gen. No. 7112, p. 675, the distinction between a fire department and a private fire company is apparent in R.C. 505.37, which provides: "[t]he board [of township trustees] [1] may employ one or more persons to maintain and operate fire-fighting equipment, or [2] it may enter into an agreement with a volunteer fire company for the use and operation of such equipment." In prescribing the composition of the fire departments discussed above, in addition to the appointment of fire fighters, each of the statutes in question requires the appointment of a fire chief. And, as concluded in 1956 Op. Att'y Gen. No. 7112, a statutory requirement to appoint a fire

chief to an established fire department does not authorize or allow the appointment of a fire chief of a private fire company with which the board has contracted for fire protection as such company does not constitute a fire department. Syllabus, 1956 Op. Att'y Gen. No. 7112. Clearly, a member of a private fire company is not included in the legislature's reference to a "person who is appointed as a volunteer fire fighter of the fire department" of a township, fire district, city or village in Am. Sub. H.B. 590.

Based on the above discussion, it is my opinion that volunteer fire fighters of a private fire company under contract with a township, township fire district, village or city are not "appointed volunteer fire fighters of a fire department" within the meaning of R.C. 505.38(A), 737.08 or 737.22, and, are, therefore, not subject to the statutory requirements of volunteer fire fighters contained therein. In order to fully answer your question, however, this conclusion must be viewed in the broader perspective in which you raise it—that is, with reference to the other statutes pertaining to volunteer fire fighters. The statutory scheme relative to fire protection, under former Ohio law and as amended by Am. S.B. 98, 113th Gen. A. (1979) (eff. Oct. 6, 1980), contemplates fire protection by two entities other than fire departments, both of which may include volunteer fire fighters.

R.C. 505.37, referenced and recited in the above discussion, authorizes the board of trustees of a township to enter into an agreement with a "volunteer fire company" for the use and operation of the township's fire fighting equipment. Under the express terms of the statute, the township may contract with the volunteer fire company, rather than appoint the members of such company to the fire department, as would be necessary to subject the volunteer members of the company to the requirements of R.C. 505.38(A). Furthermore, R.C. 505.41, which states that "[m]embers of volunteer fire companies. . . are township employees for the purpose of workers' compensation insurance. . . ," may not be enlarged to contain any other purpose—including that of defining the class of volunteer fire fighters subject to the requirements of R.C. 505.38(A).

As noted in the information you provided, prior to the enactment of Am. S.B. 98, the statutory scheme relative to fire protection included several statutes which authorized fire protection services by volunteer members of a private fire company. " '[P]rivate fire company' means any group or organization not for profit owning and operating firefighting equipment not controlled by any township or municipal corporation." R.C. 505.44 (repealed 1980). Under R.C. 505.44 (repealed 1980) and the other related statutes in the former statutory scheme, townships, township fire districts, municipal corporations, counties, state institutions, and state colleges and universities were authorized to contract for fire protection with other specified subdivisions, as well as with a "private fire company," which was defined in each instance as in R.C. 505.44 (repealed 1980), set forth above. R.C. 9.60 (repealed 1980) (state institution); R.C. 307.05 (repealed 1980) (county); R.C. 505.44 (repealed 1980) (township); R.C. 717.02 (repealed 1980) (municipal corporation, township, or township fire district); R.C. 3345.09 (repealed 1980) (state college or university).

Am. Sub. 98 repealed R.C. 9.60, 307.05, 505.44, 717.02, and 3345.09 (as well as R.C. 505.42, 505.442 and 717.021), and enacted a new R.C. 9.60, which effectively consolidates and extends all former provisions relative to contracting for fire protection and authorizes any county, political subdivision or instrumentality to contract with a fire fighting agency of this state, a private fire company or the governmental entity of an adjoining state to obtain fire protection. R.C. 9.60(C). The new R.C. 9.60 does not substantively alter the previous definition of a "private fire company." Under R.C. 9.60(A)(2), " '[p]rivate fire company' means any non-profit group or organization owning and operating firefighting equipment not controlled by any firefighting agency." " 'Firefighting agency' means a municipal corporation, township, township fire district, joint ambulance district, or joint fire district." R.C. 9.60(A)(1). The important distinguishing characteristic of the "private fire company," in addition to the contractual nature of its services, is that, under the former law and R.C. 9.60, it may only contract to operate the fire fighting equipment which it owns. Clearly,

the individual members of the "private fire company" are not volunteers appointed to a fire department within the meaning of R.C. 505.38(A), 737.08, or 737.22, and are, therefore, not subject to the requirements contained therein.

In light of the above, it is my opinion, and you are advised, that the requirements for volunteer fire fighters contained in R.C. 505.38(A), R.C. 737.08, and R.C. 737.22 apply only to those volunteer fire fighters appointed to the fire department of a township, township fire district, city or village and do not apply to volunteer fire fighters who are members of a private fire company under contract with a township, township fire district, city or village.