

Note from the Attorney General's Office:

1979 Op. Att'y Gen. No. 79-050 was clarified by
1980 Op. Att'y Gen. No. 80-023.

OPINION NO. 79-050**Syllabus:**

1. R.C. 2305.23, the "Good Samaritan" statute, applies to any person who renders emergency medical care at the scene of an emergency without remuneration or the expectation of remuneration, including volunteer fire fighters whose sole or primary duty is to perform such function.
2. Pursuant to R.C. 4731.82 through 4731.99 the rescue squad of a volunteer fire department whose personnel perform the functions of emergency medical technicians may not continue to offer emergency medical services to the public beyond August 31, 1979, unless its personnel are qualified pursuant to R.C. 4731.82, et seq.

To: Anthony G. Pizza, Lucas County Pros. Atty., Toledo, Ohio
By: William J. Brown, Attorney General, July 31, 1979

I have before me your recent request for an opinion regarding R.C. 4731.82 through 4731.99 and an amendment to Ohio's "Good Samaritan" statute, R.C. 2305.23, which became effective on August 18, 1977. I understand that the upcoming effective date of certain prohibitory language contained in R.C. 4731.92 is causing concern for certain townships' volunteer fire fighters who are desirous of continuing to provide rescue squad service, but who have not acquired certification under Ohio's Emergency Medical Technicians and Services Act, R.C. 4731.82 - 4731.99.

In your letter you describe the rescue squad activities of the volunteer fire fighters as providing "first responder first aid." You state that: "[u]pon arriving at the scene, they make a determination of the nature and extent of the emergency and call appropriate further assistance. They do not transport victims, yet do provide oxygen and other services similar to those described in §4731.82(A)." R.C. 4731.82(A) provides, in pertinent part, as follows:

[I]n an emergency [an EMT-A] determines the nature and extent of illness or injury and establishes priority for required emergency care; renders emergency care, such as opening and maintaining an airway, giving positive pressure ventilation, cardiac resuscitation, controlling of hemorrhage, treatment of shock, immobilization of fractures, bandaging, assisting in childbirth, management of mentally disturbed patients, and initial care of poison and burn patients; and where patients must in an emergency be extricated from entrapment, assesses the extent of injury and gives all possible emergency care and protection to the entrapped patient; provides light rescue service if an ambulance has not been accompanied by a specialized unit; and after extrication, provides additional care in sorting of the injured in accordance with standard emergency procedures.

Specifically, you posed the following questions:

- 1) May this volunteer unit continue to operate and provide the aforementioned services without EMT-A training and certification?
- 2) If so, what training or certification would be necessary to enable this volunteer unit to continue their operation as first responders?
- 3) Will SB 209 shield these firemen from liability, even though they do not have EMT-A training?
- 4) Will these firemen be protected from liability under the "Good Samaritan" provision of the code?

Your third and fourth questions are similar and will be addressed first. Ohio's "Good Samaritan" statute, R.C. 2305.23, provides in pertinent part:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration, or with the expectation of remuneration, from the recipient of such care or treatment or someone on his behalf.

I previously had the opportunity to consider the purpose of R.C. 2305.23. In 1973 Op. Atty Gen. No. 73-055 I stated that:

Statutes similar to the foregoing are presently in effect in the majority of states. Although the provisions vary widely from state to state, the uniform purpose is to encourage prompt treatment of injured persons at the scene of an emergency. Prior to the enactment of these statutes, only callous disregard for the misfortunes of strangers immunized the bystander from liability. The purpose was to change this unfortunate situation by eliminating the likelihood that emergency assistance might later result in civil liability.

Some of these statutes extend immunity only to limited groups, such as doctors, nurses, or others in some way related to the practice of medicine. R.C. 2305.23, however, contains no such limitation. It expressly provides for immunity from civil liability to every person who gratuitously administers emergency care at the scene of such emergency.

There is no reason why this immunity, extended to all other persons, should be withheld from special deputy sheriffs who act as volunteer operators of an ambulance service. If the legislative intent, which was to facilitate the prompt treatment of injured persons, is to be given effect, immunity must be granted to all persons who render assistance at the scene of an emergency.

In light of the foregoing, I think it clear that special deputy sheriffs who operate an ambulance service on a volunteer basis, and who administer emergency care to injured persons at the scene of an emergency, are granted immunity from civil liability under R.C. 2305.23. It should be noted, however, that R.C. 2305.23 does not extend absolute immunity to those persons administering emergency care. The statute does not protect acts that constitute either wanton or willful misconduct. There is, therefore, a possibility of a lawsuit.

Similarly, the volunteer fire fighters on behalf of whom you inquired are also protected by the limited liability provided by R.C. 2305.23.

In addition, I do not believe that the establishment of certain training requirements for emergency medical technicians in R.C. 4731.82 through 4731.99 changes that result. The General Assembly did not intend to amend the "Good Samaritan" statute by adopting R.C. 4731.82 through 4731.99. See, uncodified Section three of Am. H.B. 1 effective September 2, 1976, and 1966 Op. Att'y Gen. No. 76-060. Therefore, pursuant to R.C. 2305.23 the volunteer fire fighters you describe are entitled to take advantage of the limited liability provided to all persons who administer emergency care or treatment without compensation or the expectation of compensation at the scene of an emergency.

As noted earlier, R.C. 2305.23 was amended by S.B. 209 which added the following sentence:

The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration.

This language was added to make clear that police officers and fire fighters were entitled to the limited liability afforded by R.C. 2305.23 when administering emergency care or treatment as part of their duties as paid law enforcement officers or fire fighters. See, uncodified Section three of S.B. 209 effective August 18, 1977. Since the persons you describe are firemen who do not receive remuneration, they are protected by the original language of R.C. 2305.23 and the new language added by S.B. 209 is surplusage as to them.

Independent and separate from the "Good Samaritan" statute, the General Assembly has provided protection against civil damage liability for those persons who provide emergency medical care and who have been certified under Ohio's Emergency Medical Technicians and Services Act, R.C. 4731.82 through 4731.99, as emergency medical technicians-ambulance (EMT-As) or advanced emergency medical technicians-ambulance (ADV EMT-As) or emergency medical technicians-paramedic (Paramedics). See, R.C. 4731.90. That Act, however, goes beyond providing protection from civil liability for those certified. The purpose of that Act, as I stated in 1976 Op. Att'y Gen. 76-060, is to establish statewide standards for the education of emergency personnel in order to provide good emergency medical care for Ohioans. Beginning August 31, 1979, the Act prohibits any person from "representing" himself as so certified if he is not. R.C. 4731.92.

That leads to the principal issue of whether a township volunteer fire department may properly continue emergency medical service activities without certification of its personnel as EMT-As, ADV EMT-As or as Paramedics - after August 31, 1979.

R.C. 4731.92, set forth below, makes clear that the General Assembly intended to prohibit, on or after August 31, 1979, any public or private agency from holding itself out as an emergency medical service unless so certified.

(A) On and after August 31, 1979, no person shall represent himself as an emergency medical technician-ambulance or EMT-A until certified under division (A) of section 4731.86 or 4731.87 of the Revised Code.

(B) On and after August 31, 1979, no person shall represent himself as an emergency medical technician paramedic or paramedic until certified under division (B) of section 4731.86 or 4731.87 of the Revised Code.

(C) On and after the effective date of this section, no person shall represent himself as an advanced emergency medical technician-ambulance or ADV EMT-A until certified under division (C) of section 4731.86 or division (A) of section 4731.871 [4731.87.1] of the Revised Code.

(D) On and after August 31, 1979, no public or private agency shall advertise or disseminate information leading the public to believe that the agency is an emergency medical service, unless that agency actually provides emergency medical care as described under division (E) of section 4731.82 of the Revised Code.

I have on a prior occasion considered the circumstances which will support a conclusion that a person or agency is representing himself or itself as an emergency medical technician or service. In 1976 Op. Att'y Gen. No. 76-060, I addressed this issue as follows:

Your first question raises the issue of when an individual would "represent" himself as an emergency medical technician in violation of the provisions set out above [R.C. 4731.92(A) through (C)]. While this issue does require a factual determination to be made in each case, it does seem that an individual does represent himself as an emergency medical technician when he arrives at the scene of an emergency in contemplation of rendering emergency medical treatment even though the individual does not visually or audibly identify himself as an emergency medical technician.

Thus, if an agency regularly responds to calls for emergency medical care or treatment, there is no doubt that such an agency would be representing itself as an emergency medical service. Therefore, a volunteer fire department which regularly responds to calls for emergency medical care, is representing itself as an emergency medical service and such an agency is prohibited from doing so, beginning August 31, 1979, unless its personnel are properly certified.

By reaching these conclusions, however, I am in no way indicating that a fire fighter qua fire fighter is prohibited from providing emergency medical care to an injured person in the course of responding to a fire or related emergency.

In summary, it is my opinion that the volunteer rescue squad unit on behalf of whom you inquired may not continue to offer the services they have thus far provided beginning August 31, 1979, unless members of that unit become properly certified. The General Assembly originally adopted R.C. 4731.82 through 4731.99 in 1976 and has provided three years for persons to obtain appropriate certification. I cannot conclude that the General Assembly intended to allow non-certified emergency medical technicians to continue to provide emergency medical treatment in view of the several amendments to R.C. 4731.82 to 4731.99 that repeatedly emphasized the importance of having properly trained emergency medical technicians and that extended the time to obtain the certificates first to August 31, 1978 and then to August 31, 1979. See, Am. H.B. 1 effective September 2, 1976 and Am. Sub. H.B. 1092 effective July 13, 1978.

You have also inquired as to what certification would be necessary to allow the volunteer unit to continue to provide the emergency medical services it is presently providing. Based upon the information you provided, with regard to the level of emergency medical care provided by the volunteer firemen, the answer to your second question appears to be that the volunteer firemen would have to become certified as EMT-As. The volunteer firemen can become certified by receiving the training listed in R.C. 4731.86(A) or, if eligible, by taking advantage of the "grandfather" clause of R.C. 4731.87.

In response to your specific questions, it is my opinion, and you are advised, that:

1. R.C. 2305.23, the "Good Samaritan" statute, applies to any person who renders emergency medical care at the scene of an emergency without remuneration or the expectation of remuneration, including volunteer fire fighters whose sole or primary duty is to perform such function.

2. Pursuant to R.C. 4731.82 through 4731.99 the rescue squad of a volunteer fire department whose personnel perform the functions of emergency medical technicians may not continue to offer emergency medical services to the public beyond August 31, 1979, unless its personnel are qualified pursuant to R.C. 4731.82, et seq.