

STATE OF TENNESSEE
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Opinion No. 04-174

TEMA Disaster Recovery Volunteers

QUESTIONS

1. Does the Tennessee Emergency Management Agency (TEMA) have a duty to compensate disaster recovery volunteers mobilized pursuant to Tenn. Code Ann. §58-2-113 for their services?
2. Is TEMA required to register disaster recovery volunteers with the Board of Claims pursuant to Tenn. Code Ann. §8-42-101(3)(B)?
3. To what extent are disaster recovery volunteers and the State of Tennessee liable for negligent operation of a state vehicle by a volunteer en route to a requesting state under the Emergency Management Assistance Compact (Compact), Tenn. Code Ann. §58-2-403? Are volunteers eligible for legal representation at the expense of the State of Tennessee?
4. Are disaster recovery volunteers sent to a Compact state by TEMA entitled to Tennessee workers' compensation benefits in the event of death or injury?

OPINIONS

1. No, TEMA is authorized but not required to compensate disaster recovery volunteers for their services.
2. Yes, TEMA is required to register the names of disaster recovery volunteers with the Board of Claims.
3. Disaster recovery volunteers and the State of Tennessee are immune for the negligent operation of a state vehicle by a volunteer en route to a requesting state under the Compact if traveling to a disaster is considered rendering aid in another state pursuant to Tenn. Code Ann. §58-2-403. Requesting states are required to provide representation to disaster recovery volunteers to the same extent they provide representation to their own agents.

If not immune pursuant to §58-2-403, volunteers are immune as provided in Tenn. Code Ann. §9-8-307(h) in Tennessee, and the State of Tennessee is liable for their negligence. Volunteers are entitled to the §9-8-307 immunity and the State is entitled to sovereign immunity in other states if those states choose to recognize the immunity afforded the State of Tennessee and its volunteers

by the State of Tennessee. Regardless, if sued personally, volunteers can request legal representation at the expense of the State of Tennessee and reimbursement of any judgment.

4. Disaster recovery volunteers sent to a Compact state by TEMA are not entitled to Tennessee workers' compensation benefits in the event of death or injury.

ANALYSIS

All questions assume that the disaster recovery volunteers under discussion are neither employees of the state nor a political subdivision of the state. They are not paid any compensation for their services. The volunteers are sent by TEMA pursuant to Tenn. Code Ann. §58-2-113 to a requesting state pursuant to the Compact.

Tennessee ratified the Emergency Management Assistance Compact codified at Tenn. Code Ann. §58-2-403 in 1995. The purpose of the Compact is to provide for mutual assistance between the states entering into the compact in managing emergencies or disasters. Tenn. Code Ann. §58-2-403, Art. I. According to the web site of the National Emergency Management Association virtually every state in the Union is a Compact signatory.¹

TEMA is authorized to provide such support to sister states as is necessary to reinforce emergency management agencies in areas stricken by emergency. Tenn. Code Ann. §58-2-113(a). While on duty all personnel of emergency management support forces who are employed by the state or a political subdivision of the state are entitled to the compensation incidental to their employment. Tenn. Code Ann. §58-2-113(b). All others are entitled to such compensation as may be fixed by TEMA. *Id.* Compensation for services for persons not employed by the state or a political subdivision of the state is authorized but not required. Tenn. Code Ann. §58-2-115(a) & (b). However, such personnel must be reimbursed for all actual and necessary travel and subsistence expenses to the extent of funds available. Tenn. Code Ann. §58-2-113(b).

The statutory definition of state employee includes "any person designated by a department or agency head as a participant in a volunteer program authorized by the department or agency head." Tenn. Code Ann. §8-42-101(3)(B). Volunteers mobilized by TEMA pursuant to Tenn. Code Ann. §58-2-113 meet the statutory definition. Each department or agency is required to register the names of all persons participating in a volunteer program. Failure to do so means that any amounts paid by the state for legal representation, reimbursement of individual judgments, or judgments against the State based on their tortious acts will be funded through the department's or agency's budget rather than the Risk Management Fund. *Id.* Persons compensated for their services are not considered volunteers. Persons compensated for their expenses but not their services are considered volunteers. *See Black v. Dance*, 643 S.W.2d 654 (Tenn. 1982)(to be an employee for workers' compensation purposes, there must be an agreement for remuneration for services); *Hill v. King*, 663

¹[Http://www.emacweb.org/EMAC/About_EMAC/Model_Legislation.cfm](http://www.emacweb.org/EMAC/About_EMAC/Model_Legislation.cfm)

S.W.2d 435 (Tenn. App. 1983)(volunteer deputy sheriff who received no compensation other than a badge, uniform, pistol and expenses is not an employee for workers' compensation purposes).

With respect to liability the Compact provides in Article VI:

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

Tenn. Code Ann. §58-2-403. Disaster recovery volunteers and the State of Tennessee are immune for the acts and omissions of the volunteers taken in good faith "while rendering aid in another state." *Id.* In our view, traveling to a disaster whether the volunteer is in Tennessee, the requesting state, or in a third state en route to the requesting state meets the definition of "rendering aid in another state" for which volunteers are immune. The Compact requires requesting states to provide representation to disaster recovery volunteers to the same extent it provides representation to its own agents. *Id.*

However, even if disaster volunteers are not immune pursuant to Tenn. Code Ann. §58-2-403, Art. VI, they are immune from tort liability as provided in Tenn. Code Ann. §9-8-307(h) for acts or omissions within the scope of their volunteer duties while they are in Tennessee including claims for the negligent operation of a state-owned motor vehicle. The State of Tennessee immunizes state employees as defined by Tenn. Code Ann. §8-42-101(3) from liability for acts or omissions within the scope of the officer's or employee's office or employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain. Tenn. Code Ann. §9-8-307(h). Instead, the State of Tennessee assumes liability for their negligence in the Claims Commission subject to certain limitations. Tenn. Code Ann. §9-8-307. Volunteers are also entitled to the §9-8-307(h) immunity, and the State of Tennessee is entitled to sovereign immunity in other states if those states choose to recognize the immunity afforded the State of Tennessee and its volunteers by the State of Tennessee. *See, e.g., Pasquale v. Ohio Power Co.*, 187 W.Va. 292, 418 S.E.2d 738 (1992). Regardless, if sued personally, volunteers can request legal representation at the expense of the State of Tennessee and reimbursement of any judgment. Tenn. Code Ann. §§8-42-103, 9-8-112(h).

With respect to workers' compensation benefits, Article VIII of the Compact provides:

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same

terms as if the injury or death were sustained within their own state.

Tenn. Code Ann. §58-2-403. Under Tennessee law the definition of “state employee” includes volunteers for a state department or agency for immunity, representation and reimbursement of judgment purposes. However, volunteers are expressly excluded from workers’ compensation benefits consistent with the workers’ compensation statute. Tenn. Code Ann. §§8-42-101(3)(B) & 50-6-102(9)(A). This result is not changed by the language of Tenn. Code Ann. §58-2-113(b)(3), which provides that personnel of emergency management support forces who are not employees of the state or of a political subdivision of the state “shall be entitled to the same rights and immunities as are provided by law for the employees of this state.” The rights provided by law for “state employees” who are volunteers do not include workers’ compensation benefits.

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