

STATE OF TENNESSEE

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Opinion No. 06-029

Legal Protection of Self-Deploying Law Enforcement Officers and Authority of Law Enforcement Officers under the Emergency Management Assistance Compact (“EMAC”)

QUESTIONS

1. Are law enforcement officers who self-deploy in response to disasters, such as hurricanes Katrina and Rita, protected from tort claims by either the law of Tennessee, or the law of the host state, when the officers did not deploy pursuant to the procedures set forth under the EMAC?
2. Are law enforcement officers who self-deploy in response to such disasters covered by workers’ compensation?
3. Can law enforcement officers who deploy in response to disasters, either as volunteers or under the EMAC, execute the laws of the host state without express authorization from the host state?

OPINIONS

1. Under Article VI of Tenn. Code Ann. § 58-2-403, law enforcement officers who deploy pursuant to the EMAC are immune from tort liability. No definite answer can be given for officers who self-deploy. Whether volunteers will receive immunity from tort liability will depend on the law of the host state and the facts of the particular case.
2. No. As addressed in Op. Tenn. Att’y Gen. 04-174, self-deploying law enforcement officers are volunteers who would not be covered by Tennessee workers’ compensation laws.
3. No. Officers who deploy in response to disasters, regardless of whether such deployment was voluntary or pursuant to the EMAC, may not exercise law enforcement authority in the host state unless the host state expressly authorizes them to exercise such authority.

ANALYSIS

The EMAC was initiated in 1992, in the wake of Hurricane Andrew, and approved by Congress in 1996. Granting the Consent of Congress to the Emergency Management Assistance Compact, Pub. L. No. 104-321, 110 Stat. 3877. Its purpose is to provide form and structure to

interstate mutual aid and to resolve issues of liability and reimbursement. Member states requesting assistance agree to assume liability for out-of-state workers deployed under the EMAC, and agree to reimburse assisting states for all deployment related costs. The National Emergency Management Association, *The Emergency Management Assistance Compact Guidebook and Standard Operating Procedures*, at v. At present, 49 states, the District of Columbia, Puerto Rico and the Virgin Islands have enacted legislation to become members of the EMAC.¹

Pursuant to the EMAC, an authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. Article III, Sec. B, Tenn. Code Ann. § 58-2-403. The provisions of the EMAC shall only apply to requests for assistance made by and to authorized representatives. *Id.* Requests may be made verbally or in writing, but, if verbal, the request has to be confirmed in writing within thirty (30) days. *Id.* The request must have a description of services needed; the amount and type of personnel, equipment, materials, and supplies needed; a reasonable estimate of the length of time they will be needed; the specific place and time for staging of the assisting party's response; and a point of contact at that location. *Id.*

1. Article VI, of the EMAC states:

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents for 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.

As previously asserted, Article II Sec. B, states, “[T]he provisions of this agreement shall only apply to requests for assistance made by and to authorized representative [sic].”

Read together, the two provisions of the EMAC indicate that immunity from tort liability extends to officers who are operating pursuant to a formal request for assistance only. Those who self-deploy would be operating outside the EMAC and could not avail themselves of the protections from tort liability afforded under the agreement.

Officers who self-deploy are exposing themselves and their employers to potential tort liability to citizens of the host state. As shown by *Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182, 59, L.Ed.2d 416 (1979), sovereign immunity stops at the state line. In that case, the Court held that residents of one state may sue another state in the courts of their resident state. In *Hall*, the Court also noted that states may adopt policies of broad comity toward one another and provide limited or blanket immunity from tort claims against other states.

¹This information was obtained from the EMAC website at <http://www.emacweb.org>.

Under *Hall*, law enforcement officers of this state, and their employers, may be subject to suit in other states unless they are afforded some form of immunity. Whether self-deploying officers can claim immunity from tort liability will therefore depend on the law of the host state. Some states might offer blanket immunity to persons who provide assistance during emergencies, others might offer more limited immunity, and others might offer none at all.² Because the outcome is dependent on a number of factors, each situation would have to be evaluated on a case-by-case basis.

2. In Op. Tenn. Att’y Gen. 04-174, this office opined that volunteers are expressly excluded from workers’ compensation benefits consistent with the workers’ compensation statute. A copy of that opinion is attached.

Article VIII of the Compact also addresses the issue of workers’ compensation benefits for deployed officers. It states:

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.

By its terms, Article VIII looks to the law of the employee’s home state to determine whether a deploying officer would be entitled to workers’ compensation benefits. Officers who self-deploy would be regarded as volunteers and, therefore, are not entitled to benefits under either Article VIII or Tenn. Code Ann. § 58-2-113(b)(3).

3. Neither self-deploying officers nor officers deployed under the auspices of EMAC could legally execute the laws of the host state without proper authorization from that state. Article IV states, in part:

“Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (*except that of arrest, unless specifically authorized by the receiving state*), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services.”

²For example, Tenn. Code Ann. § 63-6-218 exempts from liability for civil damages any person who, in good faith, renders emergency medical care at the scene of a disaster. Alabama, Louisiana, and Mississippi have similar statutes See Ala. Code of 1975 § 6-5-332, Miss. Code Ann. § 75-25-37 and LSA-R.S. 37:1731. Tennessee also confers immunity to a person who was preventing or attempting to prevent a perpetrator from committing an enumerated felony. Tenn. Code Ann. § 29-34-201. No similar statutes were found for other states.

Other exemptions might be found in the case law of the host state. For example, in Alabama, an action seeking damages based on injuries that were a direct result of the injured party’s knowing and intentional participation in a crime involving moral turpitude is barred. *Lemond Construction Company v. Wheeler*, 669 So.2d 885 (Ala. 1995).

Tenn. Code Ann. § 58-2-403 (emphasis added). Under the plain meaning of the agreement codified by statute, Tennessee law enforcement officers, whether self-deployed or deployed pursuant to the EMAC, must have the authorization of the host state before they can begin law enforcement duties in the host state.

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