

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 09-153

Accident Service Fees Charged by Fire Departments

QUESTIONS

1. Does Tenn. Code Ann. § 55-10-108(h), which prohibits the charging of accident response service fees in connection with responding to motor vehicle accidents, apply to fire departments that respond to motor vehicle accidents?
2. Does Tenn. Code Ann. § 55-10-108(h) confer upon fire departments the authority to bill for services provided while responding to motor vehicle accidents?
3. Does the prohibition against the charging of accident response service fees that is set forth in Tenn. Code Ann. § 55-10-108(h) apply to incorporated volunteer fire departments?

OPINIONS

1. No. The prohibition against charging accident response service fees that is set forth in Tenn. Code Ann. § 55-10-108(h) does not apply to fire departments. The prohibition that is set forth in the statute applies to law enforcement agencies only.
2. No. Tenn. Code Ann. § 55-10-108(h) neither authorizes nor prohibits fire departments from charging fees for services provided while responding to motor vehicle accidents.
3. No. Volunteer fire departments are not law enforcement agencies and, therefore, are not subject to the prohibition against the charging of accident response service fees that is set forth in Tenn. Code Ann. § 55-10-108(h).

ANALYSIS

1. Public Chapter 651, now codified as Tenn. Code Ann. § 55-10-108(h), prohibits persons or entities from imposing an accident response service fee on an insurance company or any other

person.¹ Tenn. Code Ann. § 55-10-108(h)(1)(A) defines “accident response service fee” as “a fee imposed for the response or investigation by a *law enforcement agency* of a motor vehicle accident.” (Emphasis supplied).

The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. *State v. Hannah*, 259 S.W.3d 716 (Tenn. 2008). If the statute is clear and unambiguous, courts find legislative intent from the plain meaning of the text and will enforce the statute as written. *State v. Sherman*, 266 S.W.3d 395 (Tenn. 2008). Additionally, statutes that have a common purpose or are related to the same subject matter must be construed *in pari materia* to advance the common purpose or intent. *Wells v. Tenn. Bd. of Regents*, 231 S.W.3d 912 (Tenn. 2007). If possible, such statutes should be construed in harmony with each other. *State v. Odom*, 928 S.W. 2d 18 (Tenn. 1996).

No statutory definition of “law enforcement agency” has been found. “Fire department,” however, is defined by statute. Tenn. Code Ann. § 68-102-302 states:

[T]he term “fire department” means a department of a municipality, county, or political subdivision, or an organization, agency, or entity that offers its services, for or without pay, for the purpose of suppressing fires, performing rescue services, or for other emergency response purposes. *Excluded from this definition are law enforcement agencies, emergency medical agencies licensed by the Tennessee emergency medical services board, and rescue squads that do not provide fire protection.*

(Emphasis supplied).

Tenn. Code Ann. § 55-10-108(h) clearly and unambiguously applies to law enforcement agencies only. By its plain terms, Tenn. Code Ann. § 68-102-302 shows a clear legislative intent to define fire departments as something other than law enforcement agencies. Reading Tenn. Code Ann. § 55-10-108(h) *in pari materia* with Tenn. Code Ann. § 68-102-302 indicates that the legislature did not intend to subject fire departments to the prohibition against charging accident response fees.

2. Municipal and/or county-wide fire departments, like other local government agencies, have only such authority as is expressly conferred on them by statute, as fairly implied from the statutory language, or as is essential to carry out the declared purpose of such department. *See Arnwine v. Union County Bd. of Educ.*, 120 S.W3d 804 (Tenn. 2003). Public chapter 651 neither

¹ Tenn. Code Ann. § 55-10-108(h)(2) states:

Notwithstanding any other law to the contrary, no person or entity shall impose an accident response service fee on or from an insurance company, the driver or owner of a motor vehicle, or any other person. Nothing in this part prevents any county, municipality or other local government from billing an insurance company, the driver or owner of a motor vehicle, or any other person for ambulance service provided in response to or in conjunction with emergency response to motor vehicle accidents.

authorizes nor prohibits fire departments from charging accident response fees. Any such authority, if it exists, must be found in some other statute.²

3. You have asked whether Tenn. Code Ann. § 55-1-408(h) would apply to volunteer fire departments. Since volunteer fire departments are “fire departments” within the meaning of Tenn. Code Ann. § 68-102-302, they are not law enforcement agencies and, therefore, are not subject to the prohibition against charging accident response fees that is set forth in Tenn. Code Ann. § 55-10-108(h).

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² There are some statutes that authorize fire departments to charge fees for responding to traffic accidents in some situations. For example, Tenn. Code Ann. § 68-212-121 provides a means to recover costs incurred by a local government agency for responses to accidents involving hazardous wastes or substances. Also, Tenn. Code Ann. § 5-17-102(17) allows county-wide fire departments to make reasonable charges for any services rendered that are not included in the fire tax of its district. If responding to motor vehicle accidents is not a service that is included in the fire tax, then a fire department might be authorized to charge a fee for responding to such accidents.