

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 12-87

Volunteers Assisting the Tennessee Emergency Management Agency

QUESTIONS

1. What remedy, if any, is available to unpaid volunteers for death or injury sustained while mobilized by the Tennessee Emergency Management Agency (“TEMA”) pursuant to Tenn. Code Ann. § 58-2-113? Would a reimbursement request by an unpaid volunteer for premiums paid for private accident and injury insurance be a reimbursable claim?

2. If TEMA compensates volunteers mobilized under Tenn. Code Ann. § 58-2-113, would the payment of compensation trigger eligibility for workers compensation benefits for these volunteers as paid state employees or render these volunteers “contract vendors” for the State of Tennessee?

3. If TEMA compensates volunteers mobilized under Tenn. Code Ann. § 58-2-113, and they are considered contract vendors, what contracting process must be used to secure the volunteer service? If they are considered contract vendors, are the paid volunteers eligible for the immunity provided state officers and employees pursuant to Tenn. Code Ann. § 9-8-307(h)?

4. If TEMA compensates volunteers mobilized under Tenn. Code Ann. § 58-2-113, and they are considered paid state employees eligible for workers’ compensation benefits, must these volunteers be paid minimum wage? Would these volunteers then be subject to the federal Fair Labor Standards Act, codified at 29 U.S.C. §§ 201 to -219. Would these volunteers be eligible for civil service protection and the grievance process?

OPINIONS

1. No remedy other than general tort law is likely available for unpaid volunteers for death or injury sustained while mobilized by TEMA. An unpaid volunteer’s request for reimbursement for accident insurance would not constitute a reimbursable claim under Tenn. Code Ann. § 58-2-113(b)(3). However, in its sole discretion, TEMA could provide compensation to a volunteer to partially or fully pay for this expense under Tenn. Code Ann. § 58-2-113(b)(3).

2. TEMA's discretionary authority to provide a disaster relief volunteer compensation is not sufficient to classify a disaster relief volunteer as a paid state employee or as a contract vendor of personal services for the State of Tennessee.

3-4. The responses to Questions 1 and 2 preterm these questions.

ANALYSIS

1-2. This request concerns volunteers mobilized to assist the Tennessee Emergency Management Agency ("TEMA"), whose responsibilities are codified at Tenn. Code Ann. §§ 58-2-101 to -124, and specifically the application of Tenn. Code Ann. § 58-2-113, which provides:

(a) TEMA is authorized to provide, within or out of the state, such support from available personnel, equipment, and other resources of state agencies and the political subdivisions of the state as may be necessary to reinforce emergency management agencies in areas stricken by emergency. Such support shall be rendered with due consideration of the plans of the federal government, this state, the other states, and of the criticalness of the existing situation. Emergency management support forces shall be called to duty upon order of TEMA and shall perform functions in any part of the state or, upon the conditions specified in this section, in other states.

(b) Personnel of emergency management support forces while on duty, whether inside or outside of this state, shall:

(1) If they are employees of the state, have the powers, duties, rights, privileges, and immunities, and receive the compensation incidental to their employment;

(2) If they are employees of a political subdivision of the state, whether serving inside or outside of the political subdivision, have the powers, duties, rights, privileges, and immunities, and receive the compensation, incidental to their employment. The compensation shall be provided by and through the providing political subdivision; and

(3) If they are not employees of the state or a political subdivision thereof, they shall be entitled to the same rights and immunities as are provided by law for the employees of this state and to such compensation as may be fixed by TEMA. All personnel of emergency management support forces shall, while on duty, be subject to the operational control of the authority in charge of emergency management activities in the area in which they are serving and shall be reimbursed for all actual and necessary travel and subsistence expenses to the extent of funds available.

Under this statute, TEMA is authorized to mobilize as emergency management support forces (1) state employees, (2) employees of a political subdivision of the state and (3) non-employees of the state or a political subdivision of the state, which would include “volunteers.” These forces are utilized by TEMA to respond to emergencies or disasters in Tennessee and, pursuant to the Emergency Management Assistance Compact codified at Tenn. Code Ann. § 58-2-403, to provide necessary support to sister states to reinforce emergency management agencies in areas stricken by an emergency or disaster. *See* Tenn. Att’y Gen. Op. 04-174 at 2 (Dec. 17, 2004).

This Office has previously opined that, under Tenn. Code Ann. § 58-2-113, TEMA is authorized but not required to compensate disaster recovery volunteers for their services. Tenn. Att’y Gen. Op. 04-174 at 2. Volunteers, however, are entitled to “be reimbursed for all actual and necessary travel and subsistence expenses to the extent of funds available.” Tenn. Code Ann. § 58-2-113(b)(3). *See also* Tenn. Att’y Gen. Op. 04-174 at 2.

TEMA’s authority to provide in its sole discretion compensation to a volunteer or to reimburse a volunteer’s necessary travel and subsistence expenses “to the extent of funds available” does not elevate a volunteer’s status to that of a paid state employee or a state contract vendor. *See generally Savage v. Spur Distributing Co., Inc.*, 33 Tenn. App. 27, 30, 228 S.W.2d 122, 124 (1949) (stating the general rule that no employment contract will exist unless both parties are bound by the agreement). Moreover, given Tenn. Code Ann. § 58-2-113 specifically addresses the possible benefits available to a volunteer enlisted by TEMA, the statute’s exclusion of any other benefits implies that the General Assembly did not intend to make any further benefits available to these volunteers. *See Bryant v. Baptist Health System Home Care of East Tennessee*, 213 S.W.3d 743, 749 (Tenn. 2006) (quoting *Phillips v. Tennessee Technological Univ.*, 984 S.W.2d 217, 219 (Tenn. 1998) (stating the rule of statutory construction that “the mention of one subject in a statute means the exclusion of other subjects that are not mentioned”).

Furthermore, as this Office has recognized, Tennessee law excludes such volunteers from eligibility for workers’ compensation benefits from the State, regardless of any compensation these volunteers may receive.¹ Tenn. Code Ann. § 8-42-101(3)(B). *See also* Tenn. Att’y Gen. Op. 04-174 at 2. Thus, for such individuals, general tort law is likely the only remedy available for an injury sustained during the course of an emergency response mobilization under Tenn. Code Ann. § 58-2-113. Tort law is generally defined as a “civil wrong, other than a breach of contract, for which a plaintiff may obtain a remedy, usually in the form of damages” if the proof evidences “a breach of a legal duty that the law imposes on persons who stand in a particular relation to each other.” 21 Tenn. Prac. Contract Law and Practice § 1.4 (2011). These

¹For individuals who serve as regular employees of the State or one of its political subdivisions, workers compensation coverage would apply to injuries sustained in the course of emergency response mobilization under Tenn. Code Ann. § 58-2-113. *See* Tenn. Code Ann. § 9-8-307(a)(1)(K); Tenn. Code Ann. § 50-6-106(6); <http://treasury.tn.gov/wc/index.htm> (website for workers’ compensation program for State employees). *See also* Tenn. Att’y Gen. Op. 86-021 at 3-5 (Jan. 30, 1986). Those individuals are serving within the scope of their employment and are entitled to the powers, rights, privileges, duties, immunities, and compensation regularly incident to their employment. *See* Tenn. Code Ann. § 58-2-113(b)(1) & (2). Because the Emergency Management Assistance Compact, executed between Tennessee and other member states, requires that worker’s compensation payments be made pursuant to the laws of a volunteer’s home state, Tennessee law determines how disaster relief volunteers are compensated, wherever the disaster relief operation takes place. *See* Tenn. Code Ann. § 58-2-403, Art. VIII.

volunteers are provided the same immunity from tort liability as state employees. Tenn. Code Ann. § 58-2-113(b) (providing such immunity to all personnel of emergency management support forces).

Nor is TEMA directed by statute to reimburse a volunteer's expense for premiums paid for private accident and injury insurance. TEMA is only authorized to reimburse a disaster recovery volunteer's actual and necessary travel and subsistence expenses, to the extent funds are available. Tenn. Code Ann. § 58-2-113(b)(3). The term "subsistence" is not defined in this statute. In such cases, courts look to the dictionary definition of the word used as evidence of the meaning of the word. *See State v. Edmondson*, 231 S.W.2d 925, 928 (Tenn. 2007); *State v. Clark*, 355 S.W.3d 590, 593 (Tenn. Crim. App. 2011). The term "subsistence" generally is defined as "the minimum (as of food and shelter) necessary to support life" and "a source or means of obtaining the necessities of life." Merriam-Webster Dictionary, *available at* <http://www.merriam-webster.com> (last visited August 29, 2012). Given subsistence expenses are usually defined as food and shelter-related expenses, a volunteer's reimbursement request for private insurance would not be a valid reimbursement claim. However, in its sole discretion, TEMA could provide compensation to a volunteer to partially or fully pay for this expense. *See* Tenn. Code Ann. § 58-2-113(b)(3).

3-4. The responses to questions 1-2 pretermit questions 3-4.

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