

North Carolina Division of Labor
Division of Occupational Safety and Health
Raleigh, North Carolina

Field Information System

Operational Procedure Notice #60B

Subject: Criteria for Determining Whether Volunteer Services Personnel are Exempt From the North Carolina Occupational Safety and Health Act.

I. **Purpose:**

A. This OPN voids/deletes OPN 60 and OPN 60A from the Field Operation System, Part II.

B. This OPN transmits the policy and criteria for determining the exemption status of volunteer service personnel from the North Carolina Occupational Safety and Health Act.

II. **Discussion:**

A. March 7, 1994 opinion letter issued by the Office of the North Carolina Attorney General (attached) indicates that a strong element of control must be exerted by a volunteer service organization (in that case, a volunteer fire department) over a given worker for that "volunteer" worker to receive protection under OSHANC.

The key element of control, according to the Attorney General's office, that a service organization can exert over a "volunteer" worker is the payment for services. A volunteer service organization which does not pay at least one worker will be considered exempt from OSHANC. In cases where the status of one particular "volunteer" needs to be decided, the decision should be based on whether or not that worker has received payment from the service organization. Such an organization must pay compensation to at least one worker to be considered an employer in general. This main element of control --compensation-- must be established before any inspection takes place. Service organizations, including volunteer fire and rescue squads, can be considered employers when it is documented that they pay one or more workers, even though they may not consider themselves to be employers.

The usual compensation that establishes control is wages. Payment of wages to an individual is sufficient to determine that an employer-employee relationship

exists. An employer-employee relationship may also be determined to exist if other forms of compensation, such as commission or contracted payments, are paid to an individual. If commissions or contractual payments are involved, other elements of employer control of the individual's activities must be established to prove that an employer-employee relationship exists.

A county or municipal government may be considered to be the employer, with the service organization serving as their employing agent, in cases where it is determined that the governmental unit is exercising a strong element of control over the organization. There are five key indicators of control over such organizations:

1. One or more "volunteer" workers are paid compensation for their time. This would be in the form of wages including sick pay, vacation pay, severance pay, commissions and other amounts promised.

This condition must exist for a county or municipality to be cited as the employer. Lesser forms of monetary control over volunteers includes paying volunteers' expenses, workers' compensation, retirement, and disability insurance and/or death benefits.

2. The municipality and/or county owns equipment, tools, or vehicles used by the volunteer service organization. (Examples include fire trucks, ambulances and rescue equipment.)

3. The land and building used by the volunteer service organization is owned by the municipality and/or county.

4. The municipality/county government gets to approve either personnel or qualification rules for joining the volunteer service organization. (Examples include municipal/county rules requiring minimum qualifications for serving in the organization or mandating training.)

5. Direct supervision or direction of the work environment or the members of the volunteer service organization by a municipality or county. For example, this includes directing the activities of firefighters in battling a fire, requiring the volunteer organization to submit reports of its activities to a municipality or county, or approving the volunteer organization's operational plan by, among other things, establishing work hours for the volunteers.

III. Policy:

- A. There must be some form of direct compensation by the organization to at least one "volunteer" for an employer/employee relationship to exist.
- B. Any volunteer service organization that does not pay direct compensation is to be considered exempt from OSHANC.
- C. In cases where an employer/employee relationship is established, an inspection can proceed. Citations, if the inspection results in any, should be issued to the applicable employer. Note factors 1 through 5 above to determine if the actual employer is a municipality or county government. Again, the key factor is #1, although all applicable factors (#2-#5) should be documented. Always carefully review the total situation when dealing with a volunteer-oriented organization that does not consider itself to be an employer.
- D. Delete OPN 60 and OPN 60A from the Field Information System.
- E. Consult your supervisor on policy issues regarding service organizations that arise and are not specifically addressed by this OPN.

(Signed on Original)

James E. Bruce, Jr.
Safety Standards Officer
ETTA
April 28, 1994

(Signed on Original)

Charles N. Jeffress, Director
OSH Division
April 28, 1994

(Attached Letter from the State Attorney General)

March 7, 1994

Jim Hartsell
315 Vineyard Drive
Salisbury, North Carolina 28146

Dear Mr. Hartsell:

Thank you for your prompt response to my questions regarding your hypothetical volunteer fire departments. I apologize for not getting back with you sooner but I have been quite busy with hearings.

As I understand your request, you would like an informal opinion from me regarding Occupational Safety and health Act of North Carolina ("OSHANC") coverage of your hypothetical volunteer fire departments. According to your responses to my questions, I am assuming the following:

1. The firemen do not receive wages or other forms of compensation from the county/municipality or volunteer fire department except for worker's compensation and payment of dues to the state death benefits plan which are made by the volunteer fire department.
2. The volunteer fire department provides training, orders equipment, and reimburses the firemen for expenses.
3. The volunteer fire department supervises the work activities of the firemen and sets forth the rules which govern the firemen's work.
4. The volunteer fire department rents or owns the building which houses the fire department.
5. The county/municipality contracts with the volunteer fire department to pay \$675.00 per quarter for fire services.
6. The county/municipality collects fire taxes that are given to the volunteer fire department. Or The county/municipality does not collect fire taxes on behalf of the volunteer fire department.

7. Other than the above, the county/municipality pays no direct or indirect benefits to the firemen and does not exercise any control over their work environment.

Based upon the information you provided, it is my opinion that the volunteer fire department, whether it receives fire tax money or not, is not covered by OSHANC. The main factor in determining OSHANC status for volunteer fire departments is whether firemen receive compensation for their services, as opposed to their contributing assistance on a purely voluntary basis. Generally, compensation is defined as wages including sick pay, vacation pay, severance pay, commissions, and other amounts promised. Since the firefighters in your hypotheticals do not receive wages, they would not be considered employees of the volunteer fire department and, therefore, not covered under OSHANC. (See 12/21/93 letter to Mr. Charles Jeffress from Reginald Watkins).

Although workman's compensation benefits and contributions made to the state death benefits fund are paid by the volunteer fire department on behalf of the firemen, this, in and of itself, would not create an employment relationship between the voluntary fire department and the firemen that is sufficient for OSHANC coverage. Worker's compensation and/or disability insurance constitutes "benefits" which arguably amount to a form of compensation; however, a volunteer fireman does not receive any benefits from them unless injured while working as a voluntary firefighter. Furthermore, workman's compensation and contributions to the state death benefits fund are required by statute. (See 12/21/93 letter to Mr. Charles Jeffress from Reginald Watkins).

In that there is no employment relationship between the volunteer fire department and the firemen, OSHANC coverage does not extend to the volunteer fire departments in your hypotheticals. Thus, the volunteer fire departments are not responsible for OSHANC compliance. Under your hypotheticals, the county/municipality would also not be responsible for OSHANC compliances since there is not an employment relationship between the volunteer fire department and the firemen and the county. municipality does not appear to exercise sufficient control over the volunteer fire department such that an employment relationship is formed between them. The fact that the county/municipality contracts with the volunteer fire department to pay \$675.00 per quarter for fire services and collects fire taxes which are given to the volunteer fire department does not, standing alone, show clear and convincing evidence of control.

I hope that the above information answers any further concerns you may have regarding the applicability of OSHANC to your hypothetical volunteer fire departments.

Sincerely,

(Signed on Original)

Marvealavette D. Jackson Francis
Assistant Attorney General