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MEMBERS OF A PRIVATE FIRE COMPANY HAVE IMPLIED AUTHORITY TO ENTER ON PRIVATE PROPERTY IN PERFORMING THEIR DUTIES AT THE SCENE OF A FIRE. THE LIABILITY OF SUCH MEMBERS IS NOT LIMITED BY THE SECTION CODE WHICH LIMITS THE LIABILITIES OF PUBLIC FIRE FIGHTING COMPANIES—§§701.02, 505.42, OPINION NO. 7464, OAG 1956.

## SYLLABUS:

1. Members of a private fire company which, pursuant to Section 505.44, Revised Code, has contracted to provide fire services to a township, have implied authority to enter onto private property in performing their duties at the scene of a fire.

2. When in performing such duties damage is caused to private property, the liability of such members is not limited by the provisions of Section 701.02, Revised Code, as such provisions have no application to the members of a private company rendering fire protection service under such contract. Opinion No. 7464, Opinions of the Attorney General for 1956, page 866, approved and followed.

Columbus, Ohio, January 26, 1962

Hon. Edwin T. Hofstetter, Prosecuting Attorney  
Geauga County, Chardon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A private volunteer fire company having a contract with a township recently was confronted with the following fact situation:

“A grass fire was burning out of control in an area some distance from the road and threatened to spread rapidly and cause considerable damage. The fire department arrived promptly, but the property owner owning the land between the road and the area on fire refused to permit the fire department to cross her land.’

“Our feeling is that the fire company would have the right of entry under Article 1, Section 19 of the Ohio Constitution. We also note that R.C. 505.42 adopts R.C. 701.02 and thus it appears that the defense that a member of a fire department was engaged in performing a governmental function should be a full defense as to the negligence of said member while engaged in duty at a fire, or while proceeding toward a place where a fire is in progress, or believed to be in progress.

“We respectfully request your opinion on the right of the fire company to cross property against the owner’s wishes in order to get to the scene of a fire, and the liability of the fire company for any damage.”

As to protection against fires, Section 505.27, Revised Code, reads in part:

“The board of township trustees may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damage and accidents and may, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide such fire apparatus, mechanical resuscitators or other equipment, appliances, materials, fire hydrants, and water supply for firefighting purposes as seems advisable to the board. Such board shall provide for the care and maintenance of fire equipment, and, for such purposes, may purchase, lease, or construct and maintain necessary buildings and it may establish and maintain lines of fire-alarm communications within the limits of the township. *The board may employ one or more persons to maintain and operate fire-fighting equipment, or it may enter into an agreement with a volunteer fire company for the use and operation of such equipment.* The board may compensate the members of a volunteer fire company on such basis and in such amount as it deems equitable.

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“The board of any township may, by resolution, whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting therefrom, create a fire district of such portions of the township as it deems necessary, and the board may purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes,

or may contract for such fire protection for such district as provided in section 505.44 of the Revised Code. The fire district so created shall be given a separate name by which it shall be known.

“\* \* \*

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\* \* \*”

(Emphasis added)

Further, Section 505.44, Revised Code, reads in part :

“*In order to obtain fire protection, or to obtain additional fire protection in times of emergency, any township may enter into a contract, for a period not to exceed three years, with one or more townships, municipal corporations, or private fire companies, regardless of whether or not such township or townships, municipal corporation or corporations, or private fire company or companies are located within or without the state, upon such terms as are agreed to by them, for service of fire departments, or the use of fire apparatus, or the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivisions and private fire companies, if such contract is first authorized by the respective boards of township trustees or other legislative bodies.*

“Section 701.02 of the Revised Code, so far as it is applicable to the operation of fire departments, applies to the contracting political subdivisions and fire department members when such members are rendering service outside their own subdivision pursuant to such contract.

“\* \* \*

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\* \* \*”

(Emphasis added)

The township here concerned does not, under Section 505.37, *supra*, operate its own fire department nor employ a volunteer fire company to operate equipment owned by the township. The fire company here involved is a private volunteer fire company which operates under a contract with the township under authority of Section 505.44, *supra*.

Regarding your first question, I have been unable to find any express statutory authority giving members of a fire department the power to cross private property to get to the scene of a fire. Section 19 of Article I, Ohio Constitution, does, however, read in part :

“Private property shall ever be held inviolate but subservient to the public welfare, \* \* \*.”

Also, the question has been discussed in several court actions, the general rule being that members of a fire department may enter upon private

property in fighting a fire, said members having an implied license by law to do so in the interests of the general public.

In the case of *The Mason Tire and Rubber Company v. Lansinger*, 15 Ohio App., 310, the court at page 317, in quoting from 3 Shearman and Redfield (Law of Negligence) states as follows:

“In Section 705a, the same authors in speaking of police officers and firemen say:

“The law, by commanding peace officers, and firemen so to enter, in truth, dispenses with the consent or invitation, and for the protection of the owner and occupant and of the community imposes this limitation upon the more general right of property.\* \* \*”

Also in *Cities Service Oil Company v. Souse*, 14 Ohio Law Abstract, 429, the court stated as follows:

“\* \* \*

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\* \* \*

“We then come to the question, what are the duties the owner of property owes to such fireman while on his premises? We call attention to the rules referred to in the annotations in 13 A.L.R., 638. The second proposition or general rule reads as follows:

“‘In the majority of jurisdictions the rule is well settled that, in the absence of a statute or municipal ordinance, a member of a public fire department, who, in an emergency, enters on premises in the discharge of his duty, is a mere licensee, under a commission to enter given by law, to whom the owner or occupant owes no greater duty than to refrain from the infliction of wilful or intentional injury.’

“This is sustained by citations of authorities in a number of states of this country. Under this rule, which was the rule in most cases, where a fireman goes upon the premises of another in the discharge of his duties, the owner is only to refrain from inflicting wilful or intentional injuries, but we think there are occasions when the owner owes a greater duty at least under the decisions in this state.

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In *Gibson v. Leonard*, 143 Illinois, 182, the opinion of the court at page 189 reads as follows:

“\* \* \* In *Cooley on Torts* 313, it is said:

“‘A third class of licenses comprehends those cases in which the law gives permission to enter a man’s premises. This per-

mission has no necessary connection with the owner's interest, and is always given on public ground. An instance is, where a fire breaks out in a city. Here the public authorities and even private individuals, may enter upon adjacent premises, as they find it necessary or convenient, in their efforts to extinguish or to arrest the spread of the flames.'

"In Proctor v. Adams, 113 Mass., 376, Gray, C.J. said:

" 'In such case, though they had no permission from the plaintiff or any other person, they had an implied license by law to enter on the beach to save the property. It is a very ancient rule of the common law, that an entry upon land to save goods which are in jeopardy of being lost or destroyed by water, fire or any like danger, is not a trespass.'

"So appellant, when he entered the building, was, by the rules of the common law, a mere naked licensee, under a license given by the law itself, in no way emanating from appellee, and by virtue of which he would have a right of entry even in the teeth of an express prohibition on the part of appellee.\* \* \*"

Thus, while I have found no express statutory authority for a fire company to cross property against the owner's wishes, I believe that such may be implied as necessary for the fire company to perform its duties in the interests of the public welfare. While the instant case does concern a private fire company, said company operates under a contract to provide fire protection to the township, and in doing so performs public duties in the interests of the public welfare.

Your second question is concerned with the liability of a fire company for damages caused to private property in fighting a fire. You suggest that under Sections 505.42 and 701.02, Revised Code, the fire company and its individual members might be exempted from any negligence.

Section 701.02, Revised Code, pertaining to municipal corporations, reads in pertinent part:

\* \* \* \* \* \* \* \*

"The defense that the officer, agent, or servant of the municipal corporation was engaged in performing a governmental function, shall be a full defense as to the negligence of:

\* \* \* \* \* \* \* \*

"(B) Members of the fire department while engaged in duty at a fire, or while proceeding toward a place where a fire is in progress or is believed to be in progress, or in answering any other emergency alarm.

“Firemen shall not be personally liable for damages for injury or loss to persons or property and for death caused while engaged in the operation of a motor vehicle in the performance of a governmental function.

“\* \* \*

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\* \* \*”

Section 505.42, Revised Code, reads:

“Section 701.02 of the Revised Code, so far as it applies to the operation of fire-fighting equipment by municipal corporations, shall apply to such equipment operated by a township or a municipal corporation, or by any combination of townships and municipal corporations, as provided by sections 505.37 to 505.44, inclusive, of the Revised Code, when such operation is within the boundaries of the political subdivisions covered by any contract or agreement authorized by section 505.37 or 505.44 of the Revised Code.”

You will note that while said Section 505.42 extends the exemptions of Section 701.02, *supra*, to equipment operated by a township, the fire company in the instant case is a private company which operates its own equipment. Thus, in the present case the equipment is not operated by the township and the said exemptions do not apply. And here I am in accord with the conclusion of Opinion No. 7464, Opinions of the Attorney General for 1956, page 866, as found in the second paragraph of the syllabus, reading:

“2. Where a board of township trustees has contracted for fire protection service within the township with a private volunteer fire company composed of residents of such township, the provisions of Section 701.02, Revised Code, establishing a limitation on the liability for negligence on the part of members of a municipal fire department, have no application to the members of such private company rendering fire protection service under such contract.”

Also to consider is the provision of Section 505.44, *supra*, reading:

“Section 701.02 of the Revised Code, so far as it is applicable to the operation of fire departments, applies to the contracting political subdivisions and fire department members when such members are rendering service outside their own subdivision pursuant to such contract.”

This provision, however, in my opinion, applies only to the fire departments of municipal corporations and townships, and not to a private fire company as in the instant case. The references to “the contracting

political subdivisions” and to “rendering service outside their own subdivision” make this clear.

Further, I have not found any other provision of law which would exempt members of a fire company as in the instant case from liability for damages.

In view of the foregoing, therefore, I am constrained to conclude that where a private fire company which is operating under contract with a township crosses private property in performing its duties at a fire, the members of such company are not, by statute, exempted from liability for any damages caused to said property, and such members would, therefore, be in the same position as any other person where damages to private property are involved.

Answering your specific questions, it is my opinion and you are advised:

1. Members of a private fire company which, pursuant to Section 505.44, Revised Code, has contracted to provide fire services to a township, have implied authority to enter onto private property in performing their duties at the scene of a fire.

2. When in performing such duties damage is caused to private property, the liability of such members is not limited by the provisions of Section 701.02, Revised Code, as such provisions have no application to the members of a private company rendering fire protection service under such contract. Opinion No. 7464, Opinions of the Attorney General for 1956, page 866, approved and followed.

Respectfully,

MARK McELROY

Attorney General