

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 10

ARSON - Firefighters placed in danger of death or bodily injury;

NEGLIGENCE - Definition of negligent arson;

WORDS AND PHRASES - Person;

MONTANA CODE ANNOTATED - Sections 45-2-101(44),
45-6-102(1), 45-6-103(1).

HELD: A person who negligently places a firefighter responding to a fire in danger of death or bodily injury by purposely or knowingly

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starting the fire or causing an explosion commits the offense of negligent arson under section 45-6-102(1)(a), MCA.

23 March 1981

Robert Kelly
State Fire Marshal
Department of Justice
1409 Helena Avenue
Helena, Montana 59601

Dear Mr. Kelly:

You have asked for my opinion on the following question:

Does section 45-6-102(1)(a), MCA, include firefighters who respond to and fight a set fire as persons who would be placed in danger of death or bodily injury?

Section 45-6-102(1), MCA, defines negligent arson as follows:

A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury; or

(b) places property of another in danger of damage or destruction.

Your question is whether a person commits negligent arson if he purposely or knowingly starts a fire or causes an explosion and thereby negligently places a firefighter engaged in fighting the fire in danger of death or bodily injury. My opinion is that he does.

"Person," as used in section 45-6-102(1), MCA, "includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof." § 45-2-101(44), MCA. Clearly, a firefighter is a "person" within the meaning of section 45-6-102(1), MCA.

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When the language of the statute is clear and unambiguous, as it is here, no further interpretation can be made. Shannon v. Keller, ___ Mont. ___, 612 P.2d 1293, 1294 (1980).

I believe that the confusion concerning the interpretation of this statute has arisen because of two legal lines of reasoning which, as I shall explain, are inapplicable in this context. First, many states have adopted the following tort rule, commonly known as the "fireman's rule": A person whose negligence causes a fire or explosion that injures a responding firefighter is not liable to the firefighter for damages incurred. See, e.g., Grable v. Varela, 115 Ariz. 222, 564 P.2d 911, 912 (1977); Walters v. Sloan, 20 Cal. 3d 199, 142 Cal. Rptr. 152, 153, 571 P.2d 609, 610 (1977); Spencer v. B.P. John Furniture Corp., 255 Or. 359, 467 P.2d 429, 430 (1970).

My research has revealed no case that addresses the application of the fireman's rule in Montana. Even if the Montana Supreme Court had adopted the rule, though, it would not affect my interpretation of the criminal arson statutes. The major public policy underlying the fireman's rule in modern times is that the public rather than the individual wrongdoer should bear the responsibility for compensating injured firefighters, both in pay that reflects the hazard and in worker's compensation benefits for the consequences of the inherent risks of the job. See, e.g., Walters v. Sloan, 142 Cal. Rptr. at 155-56, 571 P.2d at 612-13; Giorgi v. Pacific Gas & Electric Co., 266 Cal. App. 2d 355, 72 Cal. Rptr. 119, 122 (1968); Krauth v. Geller, 31 N.J. 270, 157 A.2d 129, 131 (1960). This policy, with its focus on the best method of compensation for the injured, is irrelevant in the context of the criminal law, which focuses on individual culpability. The fireman's rule does not abrogate the clear intent of Montana's criminal law to punish those who negligently place any other person in danger by starting fires.

The second line of reasoning that may have caused confusion in the interpretation of Montana's law is evidenced in the case of State v. Bonfanti, 254 La. 877, 227 So. 2d 916 (1969). There the Louisiana Supreme Court held that the term "human life" as used in Louisiana's arson statute did not encompass the lives of firefighters called to the scene. 227 So. 2d at 918. Examination of Louisiana's laws reveals, however, that

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they differ significantly from Montana's, and that the rationale of Bonfanti does not apply here. In Louisiana, simple arson was defined as the intentional burning of "any property of another, without the consent of the owner" while aggravated arson was the intentional burning of "any structure, watercraft or movable, whereby it is foreseeable that human life might be endangered." 227 So. 2d at 917-18. The Louisiana court examined the history of arson laws in that state, and concluded that the reference to endangerment of human life was meant only to draw the distinction between the burning of unoccupied property and property on which human beings are customarily found, not to include anticipation of injury to firefighters or others who might come to the scene after the fire had started. 227 So. 2d at 918.

In Montana, this distinction is made by use of the term "occupied structure" in the arson statute but not the negligent arson statute, compare § 45-6-103(1), MCA, with § 45-6-102(1), MCA. Furthermore, reference is made in both statutes to the endangerment of another person. The Louisiana court's interpretation does not apply to Montana's arson laws.

THEREFORE, IT IS MY OPINION:

A person who negligently places a firefighter responding to a fire in danger of death or bodily injury by purposely or knowingly starting the fire or causing an explosion commits the offense of negligent arson under section 45-6-102(1)(a), MCA.

Very truly yours,

MIKE GREELY
Attorney General