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OPINION NO. 100

FIREFIGHTERS - Rural volunteer fire crews, immunities from suit, benefits and pensions;

FIREFIGHTERS - Rural volunteer fire crews, firefighting on federal lands or lands within an incorporated city or an adjacent county;

COUNTIES - Rural volunteer fire crews, immunities from suit, benefits and pensions;

MONTANA CODE ANNOTATED - Sections 7-33-2201, et seq., 19-12-101, et seq.

HELD: When a rural fire crew organized pursuant to section 7-33-2201, et seq., MCA, responds to a request to suppress fires on property managed by a federal agency within the county, or on property within an incorporated city or town within the county or in an adjacent county,

- 1) the immunities of section 7-33-2208, MCA, are applicable, and
- 2) the benefits of section 19-12-101, et seq., MCA, are applicable.

26 August 1980

Larry Juelfs, Esq.  
Teton County Attorney  
Teton County Courthouse  
Choteau, Montana 59422

Dear Mr. Juelfs:

You have requested my opinion on the following question:

If a rural fire crew organized pursuant to 7-33-2201, et seq., MCA, responds to a request to suppress fires on property managed by a federal agency, or on property within an incorporated city or town, or in an adjacent county,

(1) are the firefighters, the chiefs and the county immune from suit for injury to persons or property resulting from actions taken to suppress the fire;

(2) are the firefighters covered by the Volunteer Firefighters Compensation Act, section 19-12-101, et seq., MCA?

Section 7-33-2201, et seq., MCA, empowers a county governing body to organize volunteer rural fire crews, and to appoint a rural fire chief and such district rural fire chiefs as are necessary. The governing body is required by section 7-33-2202(3), MCA, to "protect the range, farm, and forest lands within the county from fire in cooperation with federal, state and other fire protection agencies, including governing bodies of adjoining counties." This duty, however, must be carried out "within the limitations of section 7-33-2205 to 7-33-2209." Sections 7-33-2205 and 7-33-2206, MCA, provide for establishment of fire seasons and for penalties for violations. Voluntary urban crews, organized to assist the rural crews, are authorized by section 7-33-2207, MCA. A limitation on liability is provided by section 7-33-2208, MCA:

Fire control powers--liability. (1) Any county rural fire chief or district rural fire chief or

his deputy may enter private property or direct the entry of fire control crews for the purpose of suppressing fires.

(2) A chief or deputy and the county or rural district are immune from suit for injury to persons or property resulting from actions taken to suppress fires under this section.

Finally, section 7-33-2209, MCA, provides for the funding of the rural volunteer fire crews. The Volunteer Firefighters Compensation Act establishes a number of benefits for volunteer firemen. Payments are made to volunteer fire companies to offset the costs of group insurance (§ 19-12-103, MCA). Additionally, pension benefits (§§ 19-12-401 through 407, MCA) and disability and death benefits (§§ 19-12-501 through 506, MCA) are established.

Your letter states that from time to time federal agencies such as the Forest Service request that county rural volunteer fire crews assist in extinguishing fires on federal lands. Incorporated cities and towns within the county, and even adjacent counties, make the same requests. Your concern is whether the immunities of section 7-33-2208, MCA, and the benefits of section 19-12-101, et seq., MCA, apply in these situations. The answer depends upon whether the volunteer crews are acting within the scope of their authority when responding to these requests.

It is clear that whenever the fire is within the exterior boundaries of the county the fire crew is acting entirely within its authority in responding to such requests. The governing statutes contain no limitations on firefighting authority based upon the ownership or control of the lands involved. Section 7-3-2201, MCA, provides that the purpose of the act is the "protection and conservation of range, farm and forest resources and the prevention of soil erosion..." Section 7-33-2202(3), MCA, requires the protection of "range, farm, and forest lands within the county from fire..." Therefore, whenever the fire being fought is within the county, the immunity of 7-33-2208 applies and the benefits of section 19-12-101, et seq., MCA, may be enjoyed.

The same is true when the fire being fought is in an adjoining county. Section 7-33-2202(3), MCA, directs the county to cooperate with other fire control agencies "including governing bodies of adjacent counties." Since fires, especially range and forest fires, know no county boundaries, it could not only frustrate the purposes of section

7-33-2201, et seq., MCA, but also needlessly endanger life and property if a fire crew were required to wait until a fire crossed the county boundary before suppression actions were taken.

Cooperation is often the essence of controlling rural fires. Cooperation is required of citizens who join the volunteer fire crews as well as cooperation among the crews and other fire fighting agencies. This is expressly recognized by section 7-33-2202(3), MCA.

THEREFORE, IT IS MY OPINION:

When a rural fire crew organized pursuant to section 7-33-2201, et seq., MCA, responds to a request to suppress fires on property managed by a federal agency within the county, or on property within an incorporated city or town within the county or in an adjacent county,

1. the immunities of section 7-33-2208, MCA, are applicable, and

2. the benefits of section 19-12-101, et seq., MCA, are applicable.

Very truly yours,

MIKE GREELY  
Attorney General