

VOLUME NO. 40

OPINION NO. 9

FIREFIGHTERS - Rural volunteer fire crews, eligibility for workers' compensation;

WORKERS' COMPENSATION ACT - Volunteer firefighters in unincorporated areas as employees;

MONTANA CODE ANNOTATED - Title 7, chapter 33, parts 21 to 23; Title 19, chapter 12; sections 7-33-4106, 19-12-102(3), 39-71-118, 39-71-401;

OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 36 (1981).

HELD: Volunteer firefighters in unincorporated areas are not "employees" within the meaning of the Workers' Compensation Act, but are entitled to benefits under the Volunteer Firefighters' Compensation Act.

20 April 1983

William A. Douglas
Lincoln County Attorney
Lincoln County Courthouse
Libby MT 59923

Dear Mr. Douglas:

You have requested my opinion on the following question:

Whether volunteer firefighters in rural fire districts are "employees" within the meaning of the Workers' Compensation Act, and are therefore entitled to Workers' Compensation Insurance coverage and protection.

Section 39-71-401, MCA, provides that the Workers' Compensation Act shall apply to all employees as defined in section 39-71-118, MCA. Section 39-71-118(1)(a), MCA, defines "employees" as those who are "in the service of an employer ... under any appointment or contract of hire, expressed or implied, oral or written."

Volunteer firefighters are not specifically referred to in the Workers' Compensation Act. However, a 1981 Attorney General's opinion concluded that volunteer firefighters in incorporated towns are "employees" under section 39-71-118, MCA. 39 Op. Att'y Gen. No. 36 (1981). The opinion was based on the "service by appointment" language in the definition of "employee" and the fact that in incorporated towns all firefighters, whether paid or volunteer, must be "appointed" by the mayor or manager under section 7-33-4106, MCA.

By contrast, firefighters in rural fire districts are not "appointed," according to the applicable statutes. Rural fire districts are regulated by Title 7, chapter 33, parts 21 to 23, MCA. While volunteer fire districts are permitted under these parts, there is no provision similar to the one providing for appointment of firefighters in incorporated municipalities. The fact that volunteer firefighters in rural fire districts neither serve under contract for hire, nor under appointment, renders the definition of "employee" in the Workers' Compensation Act inapplicable to them.

There is a separate statute concerning payments to volunteer firefighters for death or injury incurred in the performance of their duties. Insurance benefits are available to volunteer firefighters in unincorporated areas under the Volunteer Firefighters' Compensation Act, Tit. 19, ch. 12, MCA. That statute specifically

covers fire companies in unincorporated areas, towns, or villages. § 19-12-102(3), MCA.

THEREFORE, IT IS MY OPINION:

Volunteer firefighters in unincorporated areas are not "employees" within the meaning of the Workers' Compensation Act, but are entitled to benefits under the Volunteer Firefighters' Compensation Act.

Very truly yours,

MIKE GREELY
Attorney General