

This [§561.25] would prohibit officers from acting as guards or bouncers at bars, taverns, night clubs, etc; however, it would not prohibit an officer from being employed by a hotel or racing plant as a security officer because in such cases dispensing alcoholic beverages is *merely an incident* to the principal business (State ex rel. Floyd v. Noel, 124 Fla. 852, 169 So. 549), and the officers' duties are not connected directly or indirectly with the operation of the liquor business. (Emphasis supplied.)

The sale of alcoholic beverages cannot be said to be "merely an incident" to the principal business of an establishment which derives more than 50 percent of its income from such sales.

The real question for determination, then, is whether a police officer employed as described in your question would be engaged, at least indirectly, in the business as prohibited by the statute.

It is difficult for me to escape the conclusion that an off-duty police officer so employed would be engaged, at least indirectly, with the operation of the business of said establishment. The mere fact that the establishment does not own the parking area where the officer would work is of no consequence. The statute does not require that the officer be employed on the premises to be a violation of the law. Certainly, the unlawful ownership of stock in such an establishment would not require the officer's presence on the premises. The prohibited conduct is the participation in the business of an establishment which derives more than 50 percent of its income from the sale of alcoholic beverages for consumption on the premises, and the geographic location of the person indulging in such prohibited conduct is not controlling.

073-468—December 17, 1973

VOLUNTEER FIREMEN

LIABILITY OF FIRE DISTRICT FOR INSURANCE FOR VOLUNTEER FIREMEN

To: John M. Hackett, Jr., Commissioner-Treasurer, Lehigh Acres Fire Control and Rescue District, Lehigh Acres

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QUESTIONS:

1. Does the Lehigh Acres Fire Control and Rescue District have any liability for accidental death benefits?
2. Is the district authorized or required to provide any type of accident insurance?
3. Is the district authorized or required to provide any group life, health, accident or hospitalization insurance?
4. Does the district have any liability for workmen's compensation benefits for volunteer firemen?

SUMMARY:

The Lehigh Acres Fire Control and Rescue District has not had imposed upon it any liability for accidental death benefits to its volunteer firemen and is neither authorized nor required to furnish any type of accident insurance or group life, health, accident, or hospitalization insurance for its volunteer firemen. The district is under duty to obtain a policy of insurance providing for workmen's compensation coverage for its volunteer firemen or to become a

self-insurer under the provisions of Ch. 440, F. S., since its volunteer firemen perform a service for which each is paid on a "per trip" basis and this pay is added to payroll of the district for the purposes of establishing the appropriate compensation rate.

The first three questions are answered in the negative. The fourth question is answered in the affirmative.

The reading of Ch. 63-1546, Laws of Florida, and the amendments thereof by Chs. 65-1825 and 67-1633, Laws of Florida, fails to show imposing on the district any liability or any authority for the providing by the district of accident or death benefits with district funds; neither is there any authority for the district to provide for any group insurance, *viz*, life, health, accident, or hospitalization, for its volunteer firemen. Tersely, Ch. 63-1546, as amended by Chs. 65-1825 and 67-1633, created the district, described its boundaries, and made provision for the appointment of a board and term of office of its members; and authorized the board, in addition to making rules and creating a budget:

. . . to buy, own and maintain a fire department within the district, and to purchase, own and dispose of fire fighting equipment and property, real or personal, which the board may, from time to time, deem necessary or desirable to prevent and extinguish fires within the district . . .

The rule of construction applicable to the conclusion above stated is that a statutory grant carries with it, by implication, the grant of powers necessary for the exercise of the grant. The establishment of the Lehigh Acres Fire Control and Rescue District in no way carries with it an implied power to do any of the things above listed in questions 1 through 3. These can be provided only by express authority. *Hamler v. City of Jacksonville*, 122 So. 220 (Fla. 1929).

It is to be noted that §112.191, F. S., authorizes payment of accidental death benefits and insurance to cover some firefighters, *viz*, except "volunteer firemen." In a like manner §112.12, F. S., is not applicable to Lehigh Acres Fire Control and Rescue District. This section was amended by Ch. 72-388, Laws of Florida, since AGO 067-20, to the extent of adding the words "officers" so that it henceforth will read "officers and employees." The last mentioned opinion recounts that the attorney general has repeatedly held that special districts established under special acts are not agencies of the county. They are rather "independent agencies providing specific services in a limited area." Furthermore, it was pointed out in AGO 073-32, in relation to the Monroe County Antimosquito District, that it was not an agency of the county nor a governmental unit or board of the state within the purview of §112.12, authorizing each county, school board, governmental unit, department, board, or bureau of this state to pay the premiums for health or accident insurance under group insurance plans provided for their employees. In this connection it was there stated:

. . . The agencies referred to in your letter are not sufficiently different from an antimosquito district to require a finding that they would be considered a "governmental unit, department, board or bureau of this state" within the purview of §112.12, *supra*; and there is nothing in the language of the statute here in question to indicate that, in providing for a state group insurance program, the legislature intended to include also such special districts and authorities.

The conclusion is that neither the district nor the volunteer firemen come within the provisions of said section.

Chapter 73-125, Laws of Florida [§112.18 F. S.], is made applicable to "special tax districts firemen" in that it authorizes the district to negotiate policy contracts for life and disability insurance to include accidental death benefits or double indemnity coverage. Yet, it is noted that the same does not authorize the district to

pay for such, or any part thereof, from district funds. The rationale of AGO 067-20, above cited, is analogous and supportive of the conclusion here reached, *viz*, the legislature did not intend to authorize the use of district funds, or any part thereof, for the payment of the premium on any policy contract negotiated for volunteer firemen. If it had so intended it would have so stated.

The Lehigh Acres Fire Control and Rescue District is a public body within the purview of §1.01(9), F. S., *viz*:

(9) The words "public body," "body politic" or "political subdivision" include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts and all other districts in this state.

It follows that the Lehigh Acres Fire Control and Rescue District is a political subdivision within the purview of §440.02(1)(b), F. S., *viz*:

(b) The term "employment" shall include:

1. Employment by the state and all political subdivisions thereof and all public and quasi-public corporations therein, including officers elected at the polls.

The case of *Street v. Safeway Steel Scaffold Company*, 148 So.2d 38, 42 (Fla. 1962), is authority for the fact that the employment is covered under the act unless it is excluded from the act: "The Workmen's Compensation Act applies to all employment unless specifically exempt. . . ."

Volunteer firemen have the duty to answer calls at irregular times, for which each volunteer fireman is paid per trip, and the fact that the amount paid is added to the payroll of the district for the purpose of computing the appropriate rate base constitutes compensation. This compensation is paid under an agreement whereby the volunteer fireman performs a service for the district. This amounts to employment within the meaning of §440.02(1)(a), F. S. If pay to the volunteer fireman computed on a "per trip" basis is less than the minimum specified in §440.12(2), F. S., compensation payable would be in the amount of the minimum. The payment of the wages, computed at a rate per trip, is sufficient to authorize the district to provide compensation for disability and death as well as medical care and expenses either by procuring an insurance policy affording such coverage or to provide same as a self-insurer under Ch. 440, F. S.

The case of *Rosenbush v. City of North Miami Beach*, 281 So.2d 298 (Fla. 1973), held a nonsalaried volunteer policeman who was furnished a uniform to compare favorably with a volunteer fireman. The court stated: "In our opinion, there is no distinguishing a volunteer fireman who fights one public menace, fire, from a volunteer policeman who fights another public menace, crime. . . ." *Rosenbush* is authority for the proposition that the payment of compensation, *i.e.*, the furnishing of equipment, uniforms, pay per trip, or any other type of compensation is sufficient to entitle the volunteer fireman to compensation for disability in addition to medical benefits.

In the establishment of an appropriate compensation rate in a given case consideration will be given to anything of value given to the volunteer fireman by the district in addition to the per trip pay described and the same shall be given a money value for such purposes.