

Status as permanent firefighter

Number: AGO 76-75

Date: November 12, 1998

Subject:
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FIREFIGHTERS--DEFINITION OF REGULAR OR PERMANENT FIREFIGHTER; EFFECT OF PROBATIONARY STATUS

To: Philip F. Ashler, State Treasurer and Fire Marshal, Tallahassee

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QUESTIONS:

1. Who is considered a regular or permanent firefighter as contemplated in s. 633.35, F. S.?
2. Is a firefighter on probation considered to be a regular or permanent firefighter?

SUMMARY:

Section 633.35(2), F. S., delegates to the various employing agencies the authority to define, for their purposes, what shall constitute a "regular or permanent firefighter," but no individual shall be employed as a regular, permanent, or full-time professional firefighter by an employing agency without first having received a certificate evidencing satisfactory compliance with the training program established by the Division of State Fire Marshal of the Department of Insurance, and nothing within ss. 633.30-633.49, F. S., is intended to require employing agencies to hire a firefighter possessing a certificate of compliance from the division until such time as that individual shall satisfy any duly established standards or qualifications of the employing agency which exceed those established by the division. Those firefighters possessing a certificate of compliance from the division and who are hired by an employing agency, but by reason of civil service, merit, or career service laws, regulations, or rules are placed on probationary status for a fixed period of time are considered "regular or permanent firefighters" within the provisions of s. 633.35(2) and/or "full-time professional firefighters" within the provisions of s. 633.30(1), while "recruits," "recruit trainees," and "firefighter recruits" are not considered "regular or permanent firefighters" or "full-time professional firefighters" within the contemplation of s. 633.35(2).

Section 633.35, F. S., directs the Division of State Fire Marshal of the Department of Insurance (hereinafter division) to establish a firefighter training program to be administered by various approved agencies and institutions. The statute further directs that "[n]o person shall be employed as a regular or permanent firefighter as defined by the employing agency until he has obtained such certificate of compliance" evidencing that he has satisfactorily complied with the training program established by the division. Section 633.35(2), F. S.

For the purposes of the firefighting training program prescribed by s. 633.35(1), F. S., a "firefighter" is defined in s. 633.30(1), F. S., as

". . . any person initially employed as a full-time professional firefighter by any employing agency, as defined herein, whose primary responsibility is the prevention and extinguishment of fires, the protection of life and property, and the enforcement of municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires."

The employing agency, under the provisions of s. 633.30(2), F. S., is defined as "any municipality or county, the state, or any political subdivision of the state, including authorities and special districts, employing firefighters as defined in subsection (1)."

The division is charged with the responsibility of establishing uniform minimum standards for the employment and training of firefighters throughout the state, s. 633.45(1)(a), F. S., and establishing minimum curriculum requirements for schools operated by or for any employing agency for the specific purpose of training firefighter-recruits or firefighters, s. 633.45(1)(b), F. S. In conjunction with these duties, the division is authorized, subject to the availability of funds, to reimburse the various employing agencies in an amount equivalent to 50 percent of the salary, if any, and allowable living expenses of recruit trainees while in attendance at approved training programs. Section 633.36, F. S. Additionally, the employing agencies are authorized to pay all or part of the costs of tuition of trainees in attendance at approved training programs. Section 633.37, F. S.

By the provisions contained in s. 633.35(2), F. S., the various employing agencies are delegated the authority to define, for their purposes, what shall constitute a regular or permanent firefighter. However, the firefighter cannot be employed as a "regular or permanent firefighter," however defined by the employing agency, until he has received the division's certificate of compliance provided for in subsections (1) and (2) of s. 633.35, F. S. The definition of a "firefighter" provided in s. 633.030(1), F. S., is, by operation of the statute, a guideline defining those firefighters, otherwise defined by their employing agencies, who are subject to the training program provisions of s. 633.35, F. S., as a condition to their employment as regular or permanent firefighters by an employing agency.

The authority of the division extends to the establishment of uniform minimum standards for the employment and training of firefighters, the establishment of minimum curriculum requirements for schools operated by or for any employing agency for the specific purpose of training firefighter recruits or firefighters, the approval of institutions and facilities for school operation by or for any employing agency for the specific purpose of training firefighters and firefighter recruits, and the issuance of certificates of competency to persons who, by reason of experience and completion of basic inservice training, advanced education, or specialized training, are especially qualified for particular aspects or classes of firefighter duties. Section 633.45(1)(a), (b), (c), and (d), F. S. Once the division has issued its certificate of compliance to a firefighter or firefighter recruit, as provided in s. 633.35(1) and (2), F. S., its authority over the individual is relinquished, notwithstanding any further conditions or regulations that the various employing agencies may incorporate into their definition of a "regular or permanent firefighter." The employing agency may or may not have more stringent qualifications and standards for hiring and training than the minimum standards and qualifications established by the division, s.

633.42, F. S., and the employing agency is not compelled to hire an individual solely on the basis of his having completed the division's training program and received its certificate of compliance. But, if the employing agency initially hires an individual "as a full-time professional firefighter," s. 633.30(1), F. S., or "as a regular or permanent firefighter as defined by the employing agency," s. 633.35(2), then such a "hired" individual must possess a certificate of compliance from the division.

If an individual who possesses a certificate of compliance issued by the division is hired by an employing agency, and if, by reason of city or county or state civil service laws or rules or merit or career service laws or rules, such individual is on probationary status for some fixed period of time but is hired as a (probationary) regular or permanent firefighter or as a full-time professional firefighter, he is, nonetheless, a regular and permanent firefighter within the intent embodied in s. 633.35, F. S., and/or a full-time professional firefighter within the intent embodied in s. 633.30(1), F. S. However, those individuals designated and considered to be "recruit trainees," s. 633.36, F. S., "trainees," s. 633.37, F. S., "firefighter recruits," s. 633.45(1)(b), F. S., or those individuals undergoing additional training to comply with an employing agency's qualifications and standards exceeding those established by the division, s. 633.42, F. S., do not come within the scope of the definitions of "regular or permanent firefighter(s)" as contemplated by s. 633.35(2) or "full-time professional firefighter(s)" as contemplated by s. 633.30(1), as these individuals have yet to satisfactorily complete the training program and receive a certificate of compliance from the division, which is clearly a prerequisite to employment as a regular or permanent firefighter or full-time professional firefighter by any employing agency as defined in s. 633.30(2), F. S.

From the foregoing provisions it is clear that the legislative intent embodied within the enactment of Ch. 75-151, Laws of Florida, ss. 633.30-633.49, F. S., is to require that the division establish uniform minimum standards for the employment and training of firefighters as defined in s. 633.30(1) and that no firefighter so defined, or otherwise defined as a regular or permanent firefighter by the employing agency, shall be initially employed as a regular or permanent firefighter or as a full-time professional firefighter by any employing agency without first having received a certificate evidencing satisfactory compliance with the training program established by the division. While s. 633.42 authorizes the several employing agencies to establish qualifications and standards for hiring, training, or promoting firefighters that exceed those set out in ss. 633.30-633.49, the overriding legislative intent found within these sections is that any full-time professional firefighter employed by an employing agency as defined in s. 633.30(2) shall have at least successfully completed the training program established by the division and have been duly issued the division's certificate of compliance provided for in s. 633.35. However, nothing within these sections is intended to require an employing agency to hire a firefighter possessing a certificate of compliance from the division until such time as that individual shall satisfy any duly established standards and qualifications of the employing agency which exceed those established by the division.